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No. 93-1748

In the Supreme Court of the United States

OCTOBER TERM, 1993

LILLIAN SOLOMON, ET AL.,
PETITIONERS,
v.
RESOLUTION TRUST CORPORATION, AS RECEIVER FOR NASSAU SAVINGS AND LOAN ASSOCIATION, F.A.,
RESPONDENT.

(5)

No. 93-1757

SUSAN SOLOMON PATTULLO, ET AL.,
PETITIONERS,
v.
RESOLUTION TRUST CORPORATION, AS RECEIVER FOR NASSAU SAVINGS AND LOAN ASSOCIATION, F.A.,
RESPONDENT.

PETITIONS FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT.

BRIEF OF THE AMICUS CURIAE IN SUPPORT OF PETITIONS FOR A WRIT OF CERTIORARI.

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I. INTEREST OF THE AMICUS CURIAE.

This brief of the Amicus Curiae is filed on behalf of the City of Boston in support of Petitions for a Writ of Certiorari.[1] The City of Boston ["Boston"] has enacted a Rent Equity Ordinance, Chapter X of the City Code ["Boston Ordinance"] which differs in many material respects from the New York rent regulatory statutes. (A-1-64). However, the Second Circuit Court of Appeals decision in this case has been, and continues to be, erroneously cited as precedent in the Massachusetts courts. As a practical matter, the Resolution Trust Corporation ["RTC"] and the Federal Deposit Insurance Corporation ["FDIC"], in misplaced reliance on the Second Circuit decision in this case, are operating in Boston with no regard for the Boston Ordinance.

Like the City of New York, Boston experienced massive foreclosures in its real estate market in 1990 through 1991. This was followed, in some instances, by a number of bank and savings and loan failures resulting in the acquisition of many properties by RTC and FDIC. In connection with these "takeovers", Boston has witnessed several instances of an aggressive eviction policy exercised by both RTC and FDIC regarding individuals residing in their properties; individuals who are protected by the eviction provisions of the Boston Ordinance. In each instance, both RTC and FDIC have taken the position that the provisions of the Boston Ordinance are federally preempted by the Financial Institutional Reform, Recovery and Enforcement Act of 1989 ["FIRREA"], 12 U.S.C. §§ 1441, *et seq.*, particularly those provisions of the Boston Ordinance regulating evictions. The result has been an eruption of litigation between Boston and the RTC and FDIC in both the Federal and State Courts. Still other attempted evictions by RTC and FDIC, which apparently have stopped short of litigation, have been brought to Boston's attention by tenant advocates. (A-83-84).

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[1] *Resolution Trust Corp.* v. *Diamond*, 18 F.3d 111 (2d Cir. 1994) *petitions for cert. filed sub nom.*, *Pattullo* v. *Resolution Trust Corp.*, (U.S. May 4, 1994) (No. 93-1757), *Solomon* v. *Resolution Trust Corp.*, (U.S. May 4, 1994) (No. 93-1748).

According to the Tenant/Petitioners' brief (at p. 12), RTC and FDIC intend to utilize the Second Circuit decision to accelerate their evictions of rent and eviction protected tenants in states such as Massachusetts. Therefore, Boston anticipates that litigation with RTC and FDIC will continue to escalate on this issue.

In Massachusetts, rent control is enacted after the state legislature has declared a housing emergency in a particular city and passes special legislation empowering that city to exercise its police power to impose rent and eviction restrictions in order to alleviate the emergency. The special legislation for Boston was first enacted in 1969 upon the declaration "[T]hat a serious public emergency exists with respect to the housing of a substantial number of the citizens in the City of Boston. . . .". 1969 Mass. Acts, c. 797. (A-68). *Cf.* 1970 Mass. Acts, c. 863 and 1987 Mass. Acts, c. 45. (A-69-79). The preamble to the Ordinance enacted in 1984 as c. 34 (A-65-67) echoes this concern in stating that "A serious public emergency exists with respect to the housing of a substantial number of residents of the City of Boston, *particularly those who are elderly, handicapped and who have low or moderate annual incomes.*" (Emphasis added).

Although the Boston Ordinance differs from the New York rent regulatory statutes, the Second Circuit Court of Appeals decision in this case is being cited inappropriately in the Massachusetts courts by the RTC and FDIC in Boston as precedent, to the detriment of the class of persons the Boston Ordinance seeks to protect. Therefore, pursuant to Rule 37.5 of the Rules of this Court, the City of Boston hereby submits its brief as an amicus to this Court in support of the petitioners' requests for review by way of writ of certiorari.

II. REASONS FOR GRANTING THE WRIT.

The petitioners seek a review of the Second Circuit's decision in *Resolution Trust Corp.* v. *Diamond*, 18 F.3d 111 (2d Cir. 1994). The Second Circuit held, *inter alia*, that statutory obligations created by New York's eviction laws are grounded in "contract" or "lease" and, therefore, fall within the express language of FIRREA, 12 U.S.C. §§ 1441, *et seq.*, and its grant to RTC of the power to repudiate contracts or leases. *Diamond*, 18 F.3d at 120.

This case presents several grounds for granting review on a writ of certiorari under Supreme Court Rule 10.1. The decision of the Second Circuit conflicts with decisions of the court of last resort for the State of New York and is contrary to the law of contract and statutory tenancies in the other states, including Massachusetts. Moreover, the Second Circuit's decision conflicts with decisions of other United States Courts of Appeal as well as recent decisions of this Court, the resolution of which can only be accomplished by further review by this Court.

(A) THIS DECISION CONFLICTS WITH DECISIONS OF OTHER UNITED STATES COURTS OF APPEAL.

The *Diamond* Court, in creating a new federal definition of contract and lease, generated discord among certain United States Courts of Appeal regarding whether state or federal substantive law should be applied when interpreting the terms "agreement", "contract" and "lease" as contained in the provisions of FIRREA. *Diamond*, 18 F.3d at 117. The Fifth Circuit, in *Patterson* v. *FDIC*, 918 F.2d 540, 544 (5th Cir. 1990), held that FDIC, pursuant to 12 U.S.C. § 1823, could not avoid a claim of Texas' statutory homestead because, in applying state

state case law, a statutory homestead did not constitute an "agreement". Similarly, the United States Court of Appeals for the First Circuit in *Bateman* v. *FDIC*, 970 F.2d 924, 927 (1st Cir. 1992), applied state law in determining that a mechanics lien created by virtue of a Maine statute was not an "agreement" within the meaning of FIRREA. By contrast, the *Diamond* Court wholly ignored the entire body of New York contract and statutory tenancy law when it incorporated statutory obligations within the rubric of a new definition of "contract" under federal law.

(B) THE DECISION OF THE SECOND CIRCUIT CONFLICTS WITH DECISIONS OF THE COURT OF LAST RESORT FOR NEW YORK.

The decision that statutory obligations are grounded in the laws of contract and/or lease and thereby fall within RTC's power to repudiate statutory tenancies, conflicts with the settled case law of the court of last resort for the State of New York. The *Diamond* Court reasoned that, because it found that repudiation of such tenancies is within the scope of the express statutory grant of power to RTC in FIRREA, 12 U.S.C. § 1821(e), it was not necessary to reach the question of the possible "conflict preemption" of state law. *Diamond* at 125. The court was able to reach this conclusion only by redefining "leases" and "contracts" to encompass the statutory obligations created and maintained solely by virtue of New York rent control, rent stabilization and condominium/cooperative conversion protective laws. *Diamond*, 18 F.3d at 125.

New York appellate courts have long held that a contractual relationship between landlord and tenant is not a prerequisite to the application of rent control. In *Stern* v. *Equitable Trust Co.*, 238 N.Y. 267, 269-70; 144 N.E. 578 (1924) the New York Court of Appeals held:

> The tenant thus remains in possession, not by virtue of any agreement, express or implied, either as to duration of term or amount of rent, but by virtue of the compulsion which the law exerts on the landlord to allow him to remain.

See also, Whitmarsh v. *Farnell*, 298 N.Y. 336; 83 N.E.2d 543, 78 N.Y.S.2d 782 (1949); *DeSantis* v. *White Rose Associates*, 152 Misc.2d 567 (Sup. Ct. N.Y. Co. 1991).

The result of the Second Circuit's holding is the erroneous establishment of two conflicting standards in New York between the state and federal courts regarding statutory tenancies. This conflict should be resolved by this Court.

(C) THE DECISION OF THE SECOND CIRCUIT CONFLICTS WITH DECISIONS OF THE COURTS OF LAST RESORT FOR THE COMMONWEALTH OF MASSACHUSETTS AND OTHER STATES.

Under Massachusetts law, "statutory tenancies" are viewed, as they are in New York, as wholly independent of the common law definitions of lease and contract. In a recent case before the Supreme Judicial Court for the Commonwealth of Massachusetts, a foreclosing bank made an argument based on contract law similar to RTC's position in this case, *i.e.*, that foreclosure, in terminating a tenant's common law status, also terminates all statutorily created rights afforded the tenant under the Boston Ordinance. The Court summarily rejected the bank's argument and noted:

> Dime relies on several common law propositions that we conclude are not dispositive of the issue. Dime has no contractual relationship with the tenants of its former mortgagors. Dime has neither demanded

> nor accepted any rent from the occupants of the premises and has refused to enter into a landlord-tenant relationship with them. In short, Dime argues that, because there is no landlord-tenant relationship, (a) the occupants have no contractual rights against it, (b) no occupant of such premises is a tenant, and (c) there is no rental agreement that is subject to Boston's rent control law. None of these points, even if correct, is controlling in deciding whether Boston's rent control law requires Dime to obtain a certificate of eviction before seeking to evict such occupants.

Boston Rent Equity Bd. v. *Dime Sav. Bank of New York*, 415 Mass. 48; 611 N.E.2d 245, 247 (1993).

The *Dime* Court concluded that the language of the Boston Ordinance applied to all evictions of residents in Boston's regulated units and, therefore, that the bank was required to comply with the Boston Ordinance in seeking possession.

In Massachusetts, the restrictions imposed by state rent control laws are not defined by the law of contract but by those very enactments themselves. Whatever rights the owner may or may not have under common law are not relevant. *See, e.g., Rita* v. *Carella*, 394 Mass. 822, 827; 477 N.E.2d 1016, 1019 (1985). "Where a public emergency in housing exists, . . . any rights contained in a private contract must yield to rational legislative protection of the public interest." *Huard* v. *Forest St. Hous., Inc.*, 366 Mass. 203, 208; 316 N.E.2d 505, 507 (1974). For this reason the Massachusetts Supreme Judicial Court in both *Huard* and *Rita* held that a tenant under rent control is entitled to recover rent overcharges even though that tenant had agreed to pay higher than the legal maximum rent. Accordingly, the Appeals Court of Massachusetts ruled in *Maguire* v. *Boston Rent Equity Bd.*, 25 Mass. App. Ct. 951, 518 N.E.2d 882, 883 (1988) that where a property is subject to

rent and eviction restrictions imposed by state and local law, a subsequent owner must accept the consequences of owning the property subject to those restrictions; that a successor owner's subjective intent to enter into a landlord/tenant relationship is irrelevant to the applicability of those protections to persons living in statutorily regulated units. *See also, Flynn* v. *City of Cambridge*, 383 Mass. 152; 418 N.E.2d 335 (1985) *and compare Dime Sav. Bank*, 415 Mass. at 48; 611 N.E.2d at 245.[2]

Other state appellate courts have uniformly joined Massachusetts and New York in construing rent control laws as independent of common law principles of contract. E.g., *Gross* v. *Superior Court*, 171 Cal. App. 3d 265, 217 Cal. Rptr. 284 (1985); *Administrator of Veterans Affairs* v. *Valentine*, 490 A.2d 1165 (D.C. 1985); *Rowe* v. *Pierce*, 622 F.Supp. 1030 (D.D.C. 1985); *Merriweather* v. *D.C. Bldg. Corp.*, 494 A.2d 1276 (D.C. 1985); and *Washington Fed. Sav. & Loan Ass'n* v. *District of Columbia Rental Hous. Comm'n*, 492 A.2d 279 (D.C. 1985).[3]

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[2] Moreover in Massachusetts "[i]n the area of tenant/landlord law, unless there is an actual conflict between directives imposed by Federal and State Law, Federal Law will not displace State Law." *Cruz Management Co.* v. *Widerman*, 417 Mass. 771, 780 (1994).

[3] In *Gross* the California Court stated at 274-75 that, "If the occupant originally took lawful possession of the premises as a tenant, he remains such for the purposes of the [rent control laws] no matter what change in ownership occurs and regardless of whether under local law he is technically a tenant". In *Valentine* the District of Columbia Court of Appeals held that the Veterans Administration ["VA"] could not dispossess a tenant of a foreclosed building without complying with local rent control laws despite the VA's argument that since there was no contractual relationship between the parties, it did not have to comply with rent control. The court stated:

> We think it clear, then, that in the context [of the rent control statute] 'landlord', 'tenant' and 'rental unit' are not to be understood solely according to the technical precepts of real property law. Rather, we think they must be interpreted by reference also to their more ordinary usage and the purposes of the statute. [The statute] evinces an intent to protect from evictions persons who have been renting apartments and who continue to pay the rent.

Valentine, 490 A.2d at 1169-70.

The strain of the Second Circuit's reasoning in reading these statutory obligations as "leases" and "contracts" under FIRREA, is evidenced by the fact that the Court had to first create a lease term where none existed in New York's regulatory laws. Furthermore, in rejecting the concept of statutorily protected tenancies as defined by states such as Massachusetts which have rent control statutes, the Second Circuit failed to supply any legal support for its decision to create a new federal law of contract.

(D) THIS CASE PRESENTS IMPORTANT ISSUES OF LAW REGARDING FEDERAL PREEMPTION. THE SECOND CIRCUIT DECISION IS IN DIRECT CONFLICT WITH THE RECENT DECISIONS OF THIS COURT.

In enacting FIRREA, Congress clearly set out under which circumstances it did and did not intend preemption by the Act. *See*, 12 U.S.C. § 1821(c)(2)(c)(D) and *compare* § 1821(c)(3)(C) and (D). The *Diamond* Court, by holding that statutory tenancies are grounded in a "contract' or "lease" rather than state statute under federal law, if not state law, attempted to avoid the real issue of federal preemption of state law. *Diamond*, 18 F.3d at 121. This indirect preemption of New York state law by the Second Circuit raises several issues which have far reaching implications and which are in need of resolution by this Court.

FIRREA provides an express grant that RTC and FDIC, acting as receivers or as conservators of failed institutions, may perform certain functions. These statutory grants, however, are not all empowering so as to elevate the RTC/FDIC to the position of a "sacred cow capable of grazing upon the rights of citizens, unchecked by the courts". *Cummings Properties Management, Inc.* v. *FDIC*, 786 F.Supp. 144, 146 (D.

Mass. 1992). RTC's sweeping claims of authority are legally unsupportable especially in view of the fact that there is a very strong countervailing presumption against federal preemption of state law as illustrated by several recent decisions of this Court.

In a case just decided on May 23 of this year, this Court reaffirmed that the party arguing for the displacement of state law carries a heavy burden of showing that federal preemption was the single "clear and manifest" purpose of Congress.

> Federal statutes impinging upon important state interests "cannot . . . be construed without regard to the implications of our dual system of government. . . . [W]hen the Federal Government takes over . . . local radiations in the vast network of our national economic enterprise and thereby radically readjusts the balance of state and national authority, those charged with the duty of legislating must be reasonably explicit." It is beyond question that an essential state interest is at issue here: we have said that "the general welfare of society is involved in the security of the titles to real estate" and the power to ensure that security "inheres in the very nature of [state] government." Nor is there any doubt that the interpretation urged by petitioner would have a profound effect upon that interest: the title of every piece of realty purchased at foreclosure would be under a federally created cloud. . . . To displace traditional State regulation in such a manner, the federal statutory purpose must be "clear and manifest. . . . [Therefore] where the intent to override is doubtful, our federal system demands deference to long established traditions of state regulation.

BFP v. *Resolution Trust Corp.*, No. 92-1370, 1994 WL 197048 at 6, 7 (U.S. May 23, 1994). (Citations omitted).

In another case decided this June 13 this Court directly addressed the question of whether, in the absence of specific definitional language in a provision of FIRREA, the Courts, in interpreting the provision, should apply state or federal common law. See *O'Melveny & Meyers* v. *FDIC*, No. 93-489 (June 13, 1994). This Court resoundingly rejected the FDIC's position that federal common law should be applied. It began its analysis by noting that under *Erie R. Co.* v. *Thompkins*, 1304 U.S. 64, 78 (1938) "There is no federal general common law" and opined that the creation of a special federal common law in order to divest states of their authority over those areas traditionally reserved to the states would be inadvisable. *O'Melveny*, No. 93-489, slip. op. at 3-4. The *O'Melveny* Court noted that where a federal statute is explicit in its displacement of state law "we of course would not contradict . . . [the] federal statutory provision." However, "matters left unaddressed in such a scheme are presumably left subject to the disposition provided by state law." *O'Melveny*, No. 93-489, slip. op. at page 6 (Citations omitted). In such instances to create a whole new definition of a term by federal law which contradicts the accepted common understanding of that term under state law is not a supplement but an alteration of the federal statute. *O'Melveny*, No. 93-489, slip. op. at page 7. In *Diamond*, the Second Circuit's creation of a new federal law of "contract" and "lease" where no such definitions are found within FIRREA conflicts with these holdings in *O'Melveny* and are clearly wrong.[4]

The presumption against preemption applies particularly in those cases in which the state laws deal with rent control and health and safety issues; areas especially reserved to the states

[4]Other support for the proposition that the *Diamond* Court should have looked to state law is highlighted by the *O'Melveny* interpretation of language similar to that appearing in § 1821(e) as referring back to only those "contracts" or "leases" to which the lending institution was a party, which, naturally, would have been contracts and leases as defined by state law.

as part of their traditional police powers. *See Rowe* v. *Pierce*, 622 F.Supp. 1030, 1033 (D.C. 1985). A "presumption against preemption is particularly apt when . . . the state law said to be preempted is within the traditional police powers of the state." *Rogers* v. *Consolidated Rail Corp.*, 948 F.2d 858, 859 (2d Cir. 1991); *see also In re: Atlantic Richfield Co.*, 435 U.S. 151, 157 (1978).

In the case *sub judice*, the regulations and laws which RTC seeks to avoid through FIRREA are matters affecting both the police powers of the state and the private property rights of individuals residing in the City of New York. Where, as here, a party seeks to enforce federal law in direct contravention to state law, the power to do so should be construed very narrowly. The Second Circuit's conclusion, which permits avoidance of RTC's obligations to comply with New York's local rent control regulatory schemes, is in error and should be reviewed by this Court.

III. CONCLUSION.

For the reasons set forth above, the City of Boston respectfully requests that this Court grant the petition, vacate the decision below and remand for reconsideration the Second Circuit's decision in view of this Court's ruling in *BLP* and *O'Melveny*.

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APPENDIX A.

CHAPTER X

HOUSING SERVICES

10-1 BOSTON HOUSING AUTHORITY.

No Ordinances Apply. See Special Statutes and Regulations. (CBC 1975 Ord. T10 c. 1)

10-2 RENTAL HOUSING EQUITY ORDINANCE.

10-2.1 Definitions.

When used in this section, unless the context otherwise requires, the following terms shall have the following meanings:

Administrator shall mean the chief administrative officer of the Rent Equity Board. The Administrator shall exercise the regular and customary functions of the Board, including conducting such hearings as may be required by this ordinance with respect to rent grievances, making such recommendations to the Board in accordance with the terms of this ordinance, and hiring and discharging employees of the Board.

Board shall mean the Rent Equity Board established by subsection 10-2.2.

Capital Improvement shall mean any rehabilitation, addition or improvement which appreciably adds to the value of the property or prolongs its life, or both, but not including ordinary repairs and maintenance.

Class of Housing Accommodations shall mean all housing accommodations within the City or any category of such housing accommodations based upon size, age, construction, rent, location, or other common characteristics.

Condominium or Cooperative Conversion Eviction shall mean an eviction of a tenant by a landlord for the purpose of removing such tenant from a housing accommodation in order to facilitate the initial sale and transfer of legal title to that housing accommodation as a condominium or cooperative unit to a prospective purchaser or an eviction of a tenant by any other person who has purchased a housing accommodation as a condominium or cooperative unit.

Condominium Unit shall mean a unit in a condominium at that term is defined in Chapter 183A of the General Laws of the Commonwealth of Massachusetts.

Controlled Housing Accommodations shall mean all housing accommodations as defined in "Housing Accommodations" in this subsection.

Consumer Price Index shall mean the consumer price index for all urban consumers in the Boston SMSA as published by the U.S. Department of Labor, Bureau of Labor Statistics.

Cooperative Unit shall mean a unit in a cooperative as that term is defined in Chapters 156B or 157 of the General Laws.

Conversion shall mean the initial sale or transfer of legal title to a housing accommodation and the recording of the master deed or articles of organization pursuant to Chapters 156B, 157 or 183A of the General Laws.

Decontrolled Housing Accommodation shall mean a former housing accommodation for which an affidavit has been filed with the Board pursuant to the provisions of paragraph e. of the definition of "Housing Accommodation" in this subsection.

Dormitory or Student Housing as used in subsection 10-2.12 shall mean any building, structure or part thereof rented or offered for rent by or for any educational institution for use as housing for undergraduate students, but shall not include units rented to individual students on the open market in the ordinary course of business.

Elderly Tenant shall mean a tenant who is at least sixty-two (62) years of age.

Handicapped Tenant shall mean a tenant who is physically handicapped as defined by Section 13A of Chapter 22 of the General Laws of the Commonwealth of Massachusetts or mentally handicapped as defined by 29 U.S.C. Section 706 (7)(b).

Housing Accommodation shall mean any building, structure or part thereof or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes, within the City, including without limitation, houses, apartments, condominium units, cooperative units, rooming or boarding house units, mobile homes, trailers, or trailer or mobile home lots and other properties used for living or dwelling purposes, together with all services connected with the use or occupancy of such property, but not including the following:

a. Housing accommodations which

1. Are owned by a governmental unit, agency, or authority, provided, however, that none of the units exempted under this

paragraph a., (except for housing accommodations owned or acquired by the City of Boston) shall be eligible for vacancy decontrol under paragraph c. or paragraph e. under the definition of "Housing Accommodations" in this subsection after the basis for exemption under this paragraph a. ceases to exist; or,

2. Have mortgages insured or held by a governmental unit, except as provided in paragraph c. or paragraph f. below under the definition of "Housing Accommodation" in this subsection so long as and only to the extent that Federal or State law specifically pre-empts local rent control boards from regulating the rents for such housing accommodations, provided, however, that none of the units exempted under this paragraph shall be eligible for vacancy decontrol under paragraph c. or paragraph e. under the definition of "Housing Accommodation" in this subsection after the basis for exemption under this subsection ceases to exist; or,

3. Are under a Section 8 existing or moderate rehabilitation subsidy contract, under the rental rehabilitation program, the Chapter 707 certificate, moderate rehabilitation, or substantial rehabilitation programs or any other Federal, State, or local public subsidy program which guarantees that the tenant pays no more than thirty (30%) percent of adjusted income as the tenant's share of the rent, but only to the extent that such units remain under subsidy and the rent charged is within the subsidy contract authority of the agency providing subsidy on behalf of the tenant, provided, however, that rent increases which cause the rent to exceed the subsidy contract authority of the agency providing subsidy be subject to review by the Board under subsections 10-2.5, 10-2.6, or 10-2.7 as applicable and provided further, that if the basis for exemption under this paragraph a. ceases to exist, such units shall revert to their

prior controlled or decontrolled status for the purpose of rent regulation except that the landlord may apply for decontrol of a controlled unit if a voluntary vacancy occurred during the period of exemption.

4. Have mortgages which are financed by the Massachusetts Housing Financing Agency and are subject to the rent level determinations and rent approval requirements of Section 6 of Chapter 708 of the Acts of 1966, as amended (M.G.L. Chapter 23A, Appendix), provided, however, that none of the units exempted under this subsection shall be eligible for vacancy decontrol under subsection 10-2.1, paragraph c. or paragraph e. under the definition of "Housing Accommodations" after the basis for exemption under this subsection ceases to exist.

All such housing accommodations under this section, although exempt from local rent regulation, shall be subject to the operations of subsections 10-2.9 through 10-2.21 with regard to evictions and condominium or cooperative conversion and removal protections, except to the extent that the Federal or State law specifically exempts such housing accommodations from such protections; provided, however, housing accommodations which are owned by the Boston Housing Authority are exempt from all provisions of this section. Should such housing accommodations lose their eligibility for exemption from rent controls, the owner shall have the obligation, within thirty (30) days of such loss of eligibility, to petition the Board to establish the maximum lawful rent for such housing accommodations. Such maximum lawful rent shall be the rent lawfully charged as of February 1, 1988 adjusted to insure that such rent provides a fair net operating income as of the date of the loss of eligibility for exemption. In determining rents, the Board shall consider, but shall not set a fair net operating income in excess of, the amount of income available,

under a plan of action approved by the United States Department of Housing and Urban Development and the Executive Office of Communities and Development, at its discretion, pursuant to Title II of the Housing and Community Development Act of 1987 or under a comparable plan of action approved by the Executive Office of Communities and Development had the owner not pre-paid the mortgage; said plan of action shall be one which prevents the displacement of tenants and preserves the long-term affordability of all the units in the development; and provided further, however, housing accommodations described in paragraph 4. above shall be subject to the operations of subsections 10-2.10 with respect to condominium/cooperative conversion and removal permit protections but shall not be subject to the operation of subsection 10-2.9 with respect to eviction protections. Notwithstanding any other provision of this paragraph, with respect to any housing accommodations for which either (i) a Notice of Intent to Sell has been filed pursuant to Section 212 of the Low Income Housing Preservation and Resident Home Ownership Act of 1990 (Public Law 101-625, codified at USC 175(1) Note and referred to herein as "LIHPRHA") or (ii) a binding contract of sale has been executed between the owner and a bona fide tenant or community-based nonprofit organization to sell the housing accommodations pursuant to the Emergency Low Income Housing Preservation Act of 1987 (Public Law 100-242, as amended Public Law 100-628, Public Law 101-235, and Public Law 101-625, and referred to herein as "ELIHPA") and which lose their eligibility for exemption from rent control, the Board shall, upon petition by the owner, establish the maximum lawful rent for such housing accommodations as the rent which would be established if such housing accommodations were decontrolled housing accommodations for purposes of this section; provided however, that such owner must demonstrate in its petition that such owner has complied in

good faith with all applicable requirements of LIHPRHA or of the purchase contract entered into pursuant to ELIHPA, as applicable; and provided further that such housing accommodations shall continue to be subject to the operations of subsections 10-2.9 through 10-2.21 of the section. The provisions of the immediately preceding sentence shall not include projects for which a Notice of Intent to Sell has been filed under Section 604(b) or under Section 613(b)(1) of LIHPRHA.

The owner of housing accommodations which are subject to the provisions of this section and which, subsequent to January 10, 1983, receive a mortgage issued by the United States or the Commonwealth or any authority created under the laws thereof shall not be entitled to apply for a removal permit pursuant to subsection 2-10.11 or sent a notice pursuant to subsection 10-2.10 until the expiration of five (5) years from the date of the recording of said mortgage.

b. Housing accommodations in any building or structure containing no more than two (2) dwelling units, or containing no more than three (3) dwelling units, one of which is occupied by the owner thereof as his permanent residence; provided, however, that two (2) or more adjoining buildings or structures under common legal or beneficial ownership shall constitute a single building or structure shall be considered occupied by the owner thereof unless all beneficial owners occupy one or more dwellings therein as their permanent residence;

c. Housing accommodations constructed, created by conversion from a non-housing to a housing use, or in the opinion of the Board the entire building, structure or housing complex has been substantially rehabilitated so as to constitute the equivalent of new construction after December 1, 1968, with respect to conventionally financed housing accommodations, and

after January 1, 1975 with respect to housing accommodations described in paragraph a. under the definition of "Housing Accommodation" in this subsection, and after January 1, 1972, with respect to housing accommodations described in paragraph f. under the definition of "Housing Accommodation" in this subsection provided, however, conventionally financed housing accommodations created by conversion from a non-housing to a housing use, or in the opinion of the Board substantially rehabilitated between December 1, 1968 and December 1, 1971, so as to constitute the equivalent of new construction, shall be considered housing accommodations only for the purposes of subsections 10-2.10 through 10-2.22 inclusive of this section, and shall be treated as decontrolled housing accommodations only for the purposes of subsections 10-2.6 and 10-2.9 of this section;

d. Housing accommodations in hotels, motels, inns, tourist homes, and rooming or boarding houses which are occupied in the majority by transient guests staying for a period of fewer than fourteen (14) consecutive calendar days; provided, however, that the exception of said hotels, motels, inns, tourist homes, and rooming or boarding houses from the above definition may be reviewed at any time by the board;

e. Except with respect to a condominium or cooperative conversion eviction for the purposes of subsections 10-2.10, and 10-2.11, units of housing accommodations which are vacated voluntarily or pursuant to a court order on or after January 1, 1976. For purposes of this paragraph, units of housing accommodations shall be construed to have been so vacated when the legal occupant thereof is a person or persons other than the legal occupant of said unit prior to January 1, 1976, except for a spouse of the legal occupant, or any children of the legal occupant during the term of legal occupancy. The

owner of said vacated housing accommodation shall file with the Board an affidavit, under oath, declaring that the occupant vacated said accommodation voluntarily or pursuant to court order;

f. Housing accommodations which the United States or any Authority created under the laws thereof insures or insured the mortgage thereon pursuant to sections 207 or 220 of the National Housing Act, as amended, provided that such housing accommodations shall be considered housing accommodations only for the purposes of subsections 10-2.10 through 10-2.21 inclusive of this section, unless said housing accommodations is subject to an agreement pursuant to Mass. General Laws Chapter 121A with the City of Boston and/or the Boston Redevelopment Authority, in which case such housing accommodations shall be considered decontrolled housing accommodations only for the purposes of subsection 10-2.6 and shall be considered housing accommodations only for the purposes of subsections 10-2.9 through 10-2.21, provided further, housing accommodations which have mortgages insured under section 221(d) of the National Housing Act, as amended, and which have never received a federal rental subsidy or below market interest rate mortgage subsidy shall not be considered housing accommodations but shall be considered housing accommodations only for the purposes of subsections 10-2.10 through 10-2.21; and provided further, however, that if the titles of more than fifty (50%) percent of the units in housing accommodations which has or have mortgage insurance pursuant to section 220 of the National Housing Act, as amended, were transferred as condominium units to owner occupants and such titles were recorded at the Suffolk County registry of Deeds on or before December 31, 1983, such housing accommodations shall be exempt from all provisions of this section.

g. Mobile homes, trailers, or trailer or mobile home parks shall be considered housing accommodations only for the purposes of subsections 10-2.10 through 10-2.22 inclusive of this section, and shall be treated as decontrolled housing accommodations only for the purposes of subsections 10-2.6 and 10-2.9. Furthermore any tenant who received a notice of rent increase effective between March 1, 1987 and the effective date of this paragraph g.[1] shall be entitled to file a Rent Grievance Petition with the Board within forty-five (45) days after the date this paragraph g. goes into effect. Any notices of rent increase served on or after the effective date of this part g. shall be subject to the full requirements of subsection 10-2.6 and the applicable regulations.

For purposes of subsection 10-2.13, a mobile home or trailer shall be defined as a "mobile home" as that term is defined in Massachusetts General Laws Chapter 140 Section 32Q.

For purposes of subsection 10-2.13, a mobile home or trailer lot shall be defined as a lot rented or offered for rent for the purpose of installing a mobile home or trailer on a temporary or permanent foundation in a "Mobile Home Park' licensed pursuant to General Laws Chapter 140 Section 32B.

If a housing accommodation is exempt by operation of more than one of the provisions of these seven (7) parts, one of which provides a limited exemption and at least one of which is not so limited, then the provisions so the exemption not so limited shall apply, except the exemption described in part e., above, shall be deemed a limited exemption for purposes of this provision.

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[1]Editor's Note: This paragraph was adopted of § 2 of Ordinance 1987 c. 4, adopted on April 15, 1987.

Housing Services shall mean services or facilities provided by a landlord or required by law or by the terms of a rental housing agreement to be provided by a landlord to a tenant in connection with the use and occupancy of any housing accommodation, including without limitation, services, furniture, furnishings, and equipment; repairs, decorating and maintenance; provisions of light, heat, hot water, cold water, telephone and elevator service; kitchen, bath, and laundry facilities and privileges; use of halls, corridors, stairs, common rooms, yards and other common areas; maid service, linen service, janitorial service, removal of refuse, parking facilities, and any other benefit, privilege, or facility connected with the use or occupancy of any housing accommodation. Housing services to a housing accommodation shall include a proportionate share of the services provided to common facilities of the building in which the housing accommodation is located.

Landlord shall mean the individual who holds title to any controlled housing accommodation or decontrolled housing accommodation in any manner, including without limitation, a partnership, corporation, or trust. For purposes of this section, the rights and duties of the landlord hereunder shall be the obligation of anyone who manages, controls, or customarily accepts rent on behalf of the landlord.

Lodging house as used in subsection 10-2.12 shall mean any boarding house, lodging house or rooming house licensed or subject to licensing pursuant to General Laws Chapter 140 Section 23 but specifically not including dormitories, sororities, fraternities and any other kind of student housing, and not including any of the following: (1) units outside the jurisdiction of the Boston Rent Equity Board; (2) units leased by an educational institution on or before March 30, 1988 and now or hereafter used by such educational institution on or

before March 30, 1988 and now or hereafter used by such educational institution for dormitory or student housing purposes, provided an exemption pursuant to paragraph d. of the definition of "Housing Accommodation": in subsection 10-2.1 hereof has been obtained from the Rent Equity Board for such units on or before March 30, 1988; (3) units otherwise not subject to subsection 10-2.13. Such houses shall include but not be limited to any building, structure or complex which is designed for the letting of at least four (4) rooms to individuals not related to each other or the owner or operator thereof a spouse, grandparent, parent, child, sibling, aunt or uncle.

Lodging House Unit as used in subsection 10-2.12 shall mean any rent-controlled or decontrolled rental housing unit occupied or unoccupied in a Lodging House as that term is defined in subsection 10-2.12 part b.

Low- or Moderate-Income Tenant shall mean a tenant or group of tenants, all of whom occupy the same dwelling unit, whose total income for the twelve (12) months immediately preceding the date of any notice or the exercising of any right, whichever may occur later, is not more than one hundred (100) percent of the median income for the area as set forth in or determined based upon regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, and calculated pursuant to said regulations.

Low-Income Tenant shall mean a tenant or group of tenants, all of whom occupy the same dwelling unit, whose total income for the twelve (12) months immediately preceding the date of any notice or the exercising of any right, whichever may occur later, is not more than fifty (50%) percent of the median income

for the area as set forth in or determined based upon regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, and calculated pursuant to said regulations.

Mobile Home shall be as defined in this subsection paragraph g. under the definition of "Housing Accommodation".

Mobile Home Park shall mean "mobile home park" as defined in Section 32F of Chapter 140 of the Massachusetts General Laws.

Operating and Maintenance Expenses shall mean the reasonable and necessary expenses to a landlord of providing housing services to a tenant, including without limitation, maintenance, repair, management fee, real estate broker's commission, insurance, utilities included within the rent, but not including mortgage interest and amortization nor an allowance for obsolescence or depreciation.

Removal shall mean but is not limited to:

a. Condominium or Cooperative Conversion: This term shall mean any activity by a landlord, developer, investor or other person which would result, is intended to result, or does result in the change in form or ownership of any housing accommodation to a condominium or cooperative unit or in the sale or transfer of legal title of any housing accommodation as a condominium or cooperative unit. Such activities shall include but not be limited to:

1. The conversion of a controlled or decontrolled housing accommodation to condominium units in accordance with General Laws, chapter 183A; or

2. The conversion of a controlled or decontrolled housing accommodation to cooperative units in accordance with General Laws, Chapters 156B, 157, and 157B; or

3. The transfer, sale, marketing or advertisement of any housing accommodation as a condominium or cooperative unit.

Removal as used in subsection 10-2.12 shall mean:

a. Any activity by a landlord or any other person which would result or is intended to result in the sale and transfer of legal title of any controlled or decontrolled lodging house unit as a condominium or cooperative unit. Such activities shall include but not be limited to:

1. The conversion of controlled or decontrolled lodging house units to condominium units in accordance with General Laws, Chapter 183A, or

2. The conversion of controlled or decontrolled lodging house units to cooperative units in accordance with General Laws, Chapters 156B, 157, and 157B, or

3. The marketing, advertisement or sale of any controlled or decontrolled lodging house unit as a condominium or cooperative unit prior to the recording of a master deed or filing of Articles of Organization.

b. The change in occupancy of a controlled or decontrolled lodging house unit so as to no longer be a lodging house unit or

potential lodging house unit, including but not limited to changes in occupancy to: medical offices, professional offices, retail shops, hotels, motels, inns, parking facilities, dormitories, student housing, as well as such other changes in occupancy to any educational, industrial, religious, commercial, charitable, institutional or business purpose. Such changes in occupancy shall be subject to the provisions of this subsection whether the landlord makes the changes him/herself or whether the landlord leases or licenses the lodging house or individual lodging house units to a third party who makes such changes in occupancy.

c. The continued use of any housing unit which as of June 16, 1987 was a lodging house unit, for any non-lodging house purpose such as: a condominium, cooperative, student housing or dormitory unit.

d. The reduction of the total number of rental housing units in a building or structure by combining two (2) or more units or any parts thereof.

e. The demolition of any controlled or decontrolled lodging house unit.

f. The existence of a vacancy in a controlled or decontrolled lodging house unit for one hundred eighty (180) days or more, without a showing of good cause. Good cause shall include, but not be limited to:

1. Substantial rehabilitation or substantial upgrading of a unit for lodging house purposes; or

2. Seasonal vacancy of a unit.

Removal when used in subsection 10-2.13 shall mean and include any change of use or discontinuance of the use of part, or all of the land owned and licensed as a mobile home park, including, but not limited to, the licensee's conversion of the mobile home park, or part thereof, to a condominium or cooperative corporation.

Removal Permit shall mean a document issued by the Board, which is subject to such conditions as the Board may impose to allow removal of a controlled or decontrolled housing accommodation.

Rent shall mean the consideration, including without limitation, all bonuses, benefits, gratuities, or charges contingent or otherwise, demanded or received for, or in connection with, the use or occupancy of a housing accommodation, for housing services, or for the transfer of a lease of a housing accommodation.

Rental Housing Agreement shall mean an agreement, oral, written, or implied, between a landlord and a tenant for the use and occupancy of a housing accommodation and for housing services.

Tenant shall mean a tenant, subtenant, lessee, sublessee, or other person, entitled under the terms of a rental housing agreement to the use and occupancy of any housing accommodation. (Ord. 1972 c. 19; Ord. 1974 c. 13; Ord. 1975 c. 15; CBC 1975 Ord. T10 § 1; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33; Ord. 1985 c. 11, §§ 5, 6; Ord. 1987 c. 4; Ord. 1987 c. 6 § 1; Ord. 1987 c. 12 § 1; Ord. 1988 c. 9 §§ 2, 3, 4; Ord. 1988 c. 11 §§ 2, 3, 4; Ord. 1989 c. 1 § 1; Ord. 1989 c. 2 § 1; Ord. 1993 c. 10 § 1)

10-2.2 Rent Equity Board.[1],[2]

a. *Composition.* There shall be in the City of Boston a Board, known as the Rent Equity Board, consisting of five (5) residents of the City appointed by the Mayor, including two (2) tenants of rental housing units, who own no dwelling units; two (2) landlords, one of whom owns or manages at least twenty (20) rental dwelling units in the City, and one who owns or manages more than three (3), but less than twenty (20) rental dwelling units in the City; and one member representing the public interest, who shall have no prior involvement in advocacy on behalf of tenants or landlords, but shall represent a broad and unbiased public interest. The Administrator, with the approval of the Mayor, may serve as a public member of the Board. Members of the Board shall be appointed for a term expiring on the first Monday of the January following the next biennial municipal election at which a Mayor is elected. To the extent possible the Board shall reasonably reflect the racial composition of the City. The Administrator, if a member of the Board, shall not serve as Chairperson of the Board. The Board shall elect one of its members as Chairperson to serve in that capacity for a term of one (1) year. Vacancies shall be filled by the Mayor for the unexpired term. The Mayor may remove any member of the Board in accordance with the provisions of the City of Boston Code, Statutes, Title 5, Section 107.

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[1] **Editor's Note**: Ordinance 1987 c. 6 §6 is as follows:
SECTION SIX. NOTICE. Within 60 days after the passage of this ordinance the Rent Equity Board shall notify all residents of the City of the protections provided by Chapter 34 of the Ordinances of 1984 as amended. (See subsection 10-2.10 and subsection 10-2.12).

[2] **Editor's Note**: Ordinance 1987 c. 12 § 4 is as follows:
SECTION FOUR. NOTICE. Within 10 days after the passage of this ordinance, the Rent Equity Board shall notify all residents of mobile home parks in the City of Boston of the protections provided by this ordinance. (See subsection 10-2.13)

Compensation. Each member of the Board shall receive compensation for actual service in the amount of fifteen ($15.00) dollars per hour, or part thereof. The Administrator shall not receive any additional compensation for duties performed as a member of the Board, beyond the Administrator's salary. Members of the Board, other than the Administrator, are hereby classified as special municipal employees for the purpose of Chapter 268A of the General Laws of the Commonwealth of Massachusetts.

c. *Powers and Duties*. The Board shall be responsible for carrying out the provisions of this ordinance. The Board shall hire, with the approval of the Mayor, the Administrator. The Board shall promulgate such policies, rules, rulings and regulations, and shall issue such orders, as will further the provisions of this ordinance. The Board shall, as provided in subsections 10-2.4, 10-2.5 and 10-2.7, establish and adjust the maximum rent for housing accommodations; shall, as provided in subsection 10-2.6, adjust the rent for decontrolled housing accommodtions; shall, as provided in subsection 10-2.9, grant or deny certificates of eviction; shall, as provided in subsection 10-2.11, grant, deny or modify removal permits and shall bring such proceedings as may be necessary to enforce the provisions of this section or to enforce any policy, rule, ruling, regulation, or order promulgated or issued by the Board pursuant to this section. The Board may refer any appropriate matter to the assessing, building, fire, or housing inspection departments, or any other appropriate department, of the City, and may, at the request of any landlord, render a binding advisory opinion as to the permissible impact of a proposed capital improvement on the rents.

d. *Studies, Information, Investigations and Reports*. The Board may make such studies, conduct such hearings and in-

vestigations, and obtain such information as is deemed necessary in promulgating any regulation, rule or order pursuant to this ordinance and any regulations or order promulgated hereunder. For the foregoing purposes, a person may be summoned to attend and testify, to produce documents, and to prepare in a like manner as he may be summoned to attend as a witness before a court and before the City Council under Section 8 of Chapter 233 of the General Laws of the Commonwealth of Massachusetts. Any person who rents or offers for rent or acts as broker or agent for the rental of any controlled housing accommodation or decontrolled housing accommodation may be required to furnish under oath any information required by the Board which relates specifically to said housing accommodations, to provide records and other documents, and to make reports. Such persons shall have the right to be represented by counsel, and a transcript shall be taken of all testimony and such person shall have the right to examine said transcript at reasonable times and places. Section 10 of Chapter 233 of the General Laws of the Commonwealth of Massachusetts shall apply. The Board shall recommend adoption of such amendments as may be necessary to carry out the purposes of this section.

e. *Determination of Invalidity*. In the event that any policy, rule, ruling, regulation or order promulgated by the Board is held invalid by any court of competent jurisdiction, the Board shall forthwith amend or revoke such policy, rule, ruling, regulation or order, and cease further enforcement thereof, to the full extent required in order to conform to the principles and reasoning set forth in the decision of such court, and such decision shall be deemed binding upon the Board in connection with any and all pending matters.

f. The Board shall confer with interested parties, including but not limited to representatives of landlords, tenants, and community development corporations in order to develop written recommendations to the City Council and the Mayor for amendments to the section which will foster the preservation of housing accommodations constructed or developed pursuant to Sections 202, 221(d)(3), and 236 of the National Housing Act as housing which will remain affordable to the low-income tenants and moderate income tenants presently residing in such accommodations, including but not limited to incentives for limited equity cooperative ownership by such tenants and appropriate requirements for tenant financial contribution. The Board shall also study and make recommendations on the need for any additional procedures regarding evictions from housing which has mortgages which are financed by the Massachusetts Housing Finance Agency (MHFA). Such study shall include an analysis of present and proposed MHFA hearing procedures. The Board shall report all of its recommendations under this provision by June 30, 1989.

g. *Charges*. The Board shall require every landlord of rent controlled or vacancy decontrolled housing accommodations to pay an annual charge for services provided by the Board under this section. Such charge shall be for such services as, without limitation, the Board's cost of maintaining records regarding the landlord's housing accommodations; the Board's calculations of the landlord's annual general adjustment of maximum rent; and the Board's developing, mailing, and otherwise providing printed information and forms regarding rent control, vacancy decontrol and other related matters. Such charge shall be established by the Board by regulation on a fiscal or calendar year basis and shall be charged per individual housing accommodation, whether such housing accommodation is occupied or unoccupied. The Board may establish a

charge by subclass for such housing accommodations. Any such annual charge established by the Board shall be reflective of the costs incurred by the Board in providing services under this section; provided, however, that in no event shall such annual charge be less than twelve ($12.00) dollars nor more than thirty-six ($36.00) dollars per year per individual housing accommodation. The annual charge shall be payable to the City of Boston by the landlord, and the Board shall establish by regulation the time, place and manner for such payment. The Board shall insure that all charges collected pursuant to this ordinance are deposited with the Collector-Treasurer. After such payment has been made, the landlord may charge all or part of the annual charge for each such housing accommodation to the tenants thereof. For purposes of this section, if the landlord so acts, said charge shall be rent, as defined by City of Boston Code, Ordinances, Chapter X, Section 10-1.2.

If a landlord has failed to pay such charge as required, all petitions, applications or other like submissions filed with the Board by such landlord requesting Board action shall be deemed defective and the Administrator shall administratively dismiss such petition, application or submission.

A general adjustment of maximum rent for any class of rent controlled housing accommodation shall not be applicable and an increase shall not be authorized for such housing accommodation where the landlord fails to pay the annual charge required herein for such housing accommodation. Notwithstanding anything stated in this section to the contrary, the Administrator may allow a petition, application or other submission to go forward, and may allow a general adjustment of maximum rent to be applicable and a rent increase to be authorized, if a landlord who has not paid the charge required herein shows, and the Administrator finds, good cause for such nonpayment.

(Ord. 1972 c. 19; Ord. 1974 c. 13; Ord. 1975 c. 15; CBC 1975 Ord. T10 § 2; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33; Ord. 1984 cs. 7, 29-34; Ord. 1988 c. 9 § 10[e]; Ord. 1988 c. 11 § 5; Ord. 1989 c. 1 § 2; Ord. 1989 c. 7 § 1; Ord. 1991 c. 2 §1)

10-2.3 Registration.

The Board may require registration of all controlled housing accommodations on forms approved by the Administrator. Whoever fails to file in a timely manner any statement or information required to be filed under this section shall, in addition to all other penalties pursuant to subsection 10-2.17, be subject to a fine of up to fifty ($50.00) dollars per calendar day, or part thereof, that such failure continues. No petition for an upward adjustment of maximum rent shall be accepted by the Board until all statements and information required to be filed pursuant to this section have been filed, and all such petitions received prior to such filing shall be dismissed by the Board.
(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 3; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33)

10-2.4 Maximum Rent.

The maximum rent of a controlled housing accommodation shall be the rent which was established under Chapter 842 of the Acts of 1970, and Section 13(a) of Chapter 19 of the Ordinances of 1972, as amended as adjusted by the Board pursuant to Chapter 15 of the Ordinances of 1975 as amended

or Chapter 1 of the Ordinances of 1983, as amended, whichever is applicable; provided, however, the maximum rent for a rent controlled housing accommodation in a cooperative shall be the rent charged as of May 1, 1982. If the maximum rent of a controlled housing accommodation has not otherwise been established, it shall be established by the Board. Any maximum rent for a controlled housing accommodation shall be adjusted subsequently in accordance with the provisions of subsections 10-2.5 and 10-2.7.
(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 4; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33)

10-2.5 Adjustment of Maximum Rent.

a. *General Adjustments.* Commencing in 1985, the Board shall annually adjust the maximum rent established pursuant to subsection 10-2.4 by percentage, for all controlled housing accommodations which have not received an adjustment during the prior calendar year and which are in compliance with Article II of the State Sanitary Code. Each such maximum rent shall be adjusted in an amount equal to the percentage increase or decrease in the consumer price index during the prior calendar year, said adjustment to become effective on the first day of June of each year commencing on June 1, 1985.

The Board may, by order or regulation as provided in subsection 10-2.7, make such other general adjustments, either upward or downward, in the maximum rent established by subsection 10-2.4 for all controlled housing accommodations or any class thereof as may be necessary to remove hardships or to correct other inequities, and in so doing, shall observe the principle of maintaining maximum rents for controlled

housing accommodations at levels which will yield to landlords a fair net operating income from such housing accommodations.

The Board shall cause a notice of any such general adjustment of maximum rents for controlled housing accommodations to be published three (3) times in at least one newpaper of general circulation in the City at least thirty (30) days prior to the effective date thereof and shall send to all landlords of controlled housing accommodations a copy of said notice by first class mail.

b. *Individual Adjustments*. The Board shall by order as provided in subsection 10-2.7, make such individual adjustments, either upward or downward, of the maximum rents established by subsection 10-2.4, or as adjusted pursuant to paragraph a. of this subsection, for any controlled housing accommodation as may be necessary to remove hardships or to correct other inequities, and in so doing, shall observe the principle of maintaining maximum rents for controlled housing accommodations which will yield to landlords a fair net operating income from such housing accommodations.

c. *Fair Net Operating Income*. In determining whether the maximum rent for a controlled housing accommodation yields a fair net operating income, the Board shall consider, without limitation, the following relevant factors:

1. Increases or decreases in property taxes;

2. Unavoidable increases or any decreases in operating and maintenance expenses;

3. Capital improvement of the controlled housing accommodation;

4. Increases or decreases in living space or housing services; and

5. Substantial deterioration of the controlled housing accommodation, other than ordinary wear and tear, or failure to perform ordinary repair, replacement or maintenance.

d. For the purposes of adjusting rents under the provisions of paragraph b. of this subsection, the Board may promulgate a schedule of standard rental increases or decreases for improvement or deterioration of specific housing services.

e. *Denial of Adjustment.* Notwithstanding any other provisions of this subsection, the Board may deny or refuse to grant any upward adjustment of the maximum rent for a controlled housing accommodation, if, upon petition of the tenant, it determines that the affected controlled housing accommodation does not comply with Article II of the State Sanitary Code or the State Building Code or the Boston Fire Prevention Code or any other applicable municipal code, ordinance, or State law, regulating the conditions or occupancy of housing accommodations. The Board may refuse to make a downward adjustment of the maximum rent for a controlled housing accommodation if it determines that the tenant is more than sixty (60) days in arrears in tendering rent for such housing accommodation, unless such arrearage is due to a withholding of rent pursuant to the provisions of Section 127L of Chapter 111 or Section 8A of Chapter 239 of the General Laws of the Commonwealth of Massachusetts. For the purposes of this paragraph, an inspection report of a Board inspector or of any authorized State or City inspector or investigator shall be prima facie evidence that the conditions or lack of compliance reported exists.

f. The Board may remove maximum rent levels established pursuant to subsections 10-2.4, 10-2.5 or 10-2.7, for any class of controlled housing accommodations if, in its judgment the need for continuing such maximum rental levels no longer exists because of sufficient construction of new housing accommodations, the rental levels for which are comparable to the rental levels of the class of controlled housing accommodations for which the maximum rental levels are to be discontinued or because the demand for housing accommodations has otherwise been met. Any maximum rental level removed pursuant to this paragraph shall be reimposed or adjusted and reimposed upon a finding by the Board that a substantial shortage of housing accommodations exist and that such reimposition is necessary to serve the public interest. Any action under this paragraph shall be subject to the hearing and notice requirements of paragraph b. of subsection 10-2.7.
(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 5; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33)

10-2.6 Rent Grievances.

All elderly, handicapped, or low- or moderate-income tenants of decontrolled housing accommodations may petition the Board on a form approved by the Administrator for a downward adjustment of the rent for such a housing accommodation if the landlord has increased the rent for such a housing accommodation by percentage which is greater than the percentage increase in the consumer price index for the twelve (12) months immediately preceding the date of said tenant's petition. For the purpose of preventing rent gouging, all other tenants of decontrolled housing may petition the Board on a form approved by the Administrator for a downward adjustment of the

rent for such housing accommodation if the landlord has increased the rent for said tenant's housing accommodation by a percentage greater than ten (10%) percent in any one year. The Board shall, at least annually, take all reasonable steps to make such tenant aware of the provisions of this subsection and the rights and protections of all tenants existing pursuant to this section. The Administrator shall conduct a hearing with respect to all such petitions filed and shall make a recommendation to the Board. The Board shall not be bound by the Administrator's recommendation and shall evaluate independently the evidence as presented to the Administrator. The Board shall act within a reasonable time after receiving the Administrator's recommendation; provided, however, such action shall occur within sixty (60) days after the Board's receipt of a petition. Until a decision has been made by the Board in favor of the tenant, the tenant shall be obligated to tender such rent increase as lawfully required by the landlord; provided, however, the Board shall order repayment. The Board may by regulation modify the hearing procedure provided for in this section to serve the public interest.

Any such petiton shall be filed with the Board within forty-five (45) days after the tenant's receipt of the landlord's notice of the rent increase; provided, however, the Board may extend such period for filing if the tenant was unable to file the petition due to illness, absence from the City, or other good cause. The Administrator shall notify the landlord upon receipt of a petition. Failure on the part of the landlord to appear at a hearing, either in person or through counsel, on a tenant's petition pursuant to this subsection shall result in an automatic approval of said tenant's petition.

Within forty-five (45) days after the effective date of this section, annually on the second day of January, beginning in 1985, and as part of any notice of an increasee in the rent for any decontrolled housing accommodation, and upon a tenant's initial taking of occupancy in a unit of a housing accommodation, every tenant shall be notified in writing of his right to file a rent grievance with the Board pursuant to this subsection. Such notice shall be in a form which has been approved by the Administrator and shall contain information respecting the conditions of eligibility and the procedure for such rent grievances. On or before February 1st of each year, the landlord shall file with the Board an affidavit, under penalty of perjury, that he has caused the notice to be mailed on or about January 2 to each such tenant. Notwithstanding any other provisions of this subsection, no landlord shall receive more than one rent adjustment in any twelve (12) month period.
(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 6; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33)

10-2.7 Rent Adjustment Proceedings of Controlled Housing Accommodations.

a. *Individual Adjustment of Maximum Rent*. The Board shall consider an adjustment of rent for an individual controlled housing accommodation upon receipt of a petition for adjustment filed by the landlord or tenant of such housing accommodation or upon its own initiative. Such petition shall be made on a form approved by the Administrator. The Board shall notify the landlord and tenant if the petition was filed by the tenant, or the tenant and landlord if the petition was filed by the landlord, upon receipt of such petition of the right of either party to request a hearing in writing within fifteen (15) calendar

days after the receipt of such notice, or the Board may schedule a hearing upon its own initiative. If a hearing is requested in a timely manner by either party, or if the action is undertaken upon the initiative of the Board, notice of the time and place of the hearing shall be furnished to the landlord and the tenant and the hearing shall be conducted before a designee of the Board. The Board may consolidate petitions and actions taken under its own initiative relating to controlled housing accommodations in the same building or development, and all such petitions and actions may be considered in a single hearing.

b. *General Adjustment of Maximum Rent by Regulation.* Upon its own initiative, the Board may make a general adjustment, in addition to those required by paragraph a. of subsection 10-2.5, by percentage or otherwise, of the rental levels for any class of controlled housing accommodations subject to such conditions, if any, as the Board shall determine. Prior to making such adjustments, a public hearing shall be held before at least a majority of the Board. Notice of the time, place and purpose of such hearing shall be published three (3) times in at least one newspaper of general circulation in the City, the first such publication shall appear at least thirty (30) days prior to the scheduled date of said hearing.

c. *Limitations on Petitions for Individual Adjustment.* Notwithstanding any other provision of this subsection, the Board may, without holding a hearing, refuse to adjust the maximum rent for an individual controlled housing accommodation and may dismiss any petition for adjustment if a decision has been made with respect to the maximum rent for such housing accommodation within the preceding twelve (12) months or if the Board finds that the petition for adjustment is filed for the purposes of harassment or for any other purpose not intended by this section.

d. Hearings required under paragraph a. shall be conducted in accordance with the provisions of Section 11 of Chapter 30A of the General Laws of the Commonwealth of Massachusetts, except that requirements (7) and (8) of said Section 11 shall not apply to such hearings.
(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 7; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33)

10-2.8 Information to be Supplied in Connection with Tenant Petitions and Board Initiated Actions for for Adjustment — Controlled Housing Accommodations.

Upon receipt by the Board of a tenant petition for adjustment of maximum rent for a controlled housing accommodation, or upon action initiated by the Board for adjustment of maximum rent for any such housing accommodation, the landlord shall furnish to the Administrator, within fifteen (15) days after a written demand thereof, an information statement in forms approved by the Administrator. Whoever fails to file in a timely manner any information required to be filed under this subsection may, in addition to all other penalties pursuant to subsection 10-2.17, be subject to a fine of up to fifty ($50.00) dollars per calendar day, or part thereof, that such failure continues.
(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 8; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33)

10-2.9 Evictions; Controlled and Vacancy Decontrolled Housing Accommodations.

a. No person shall bring any action to recover possession of a controlled or vacancy decontrolled housing accommodation unless:

1. The tenant has failed to pay the rent to which the landlord is legally entitled;

2. The tenant has violated an obligation or covenant of tenancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation after having received written notice thereof from the landlord;

3. The tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the housing accommodation, or is creating substantial interference with the comfort, safety, or enjoyment of the landlord or other occupants of the same or any adjacent housing accommodation;

4. The tenant is convicted of using or permitting a housing accommodation to be used for any illegal purpose;

5. The tenant, who had a written rental housing agreement which terminated on or after the passage of this section has refused, after written request or demand by the landlord, to execute a written extension or renewal thereof for a further term of like duration and in such terms as are not inconsistent with or violative of any provisions of this section;

6. The tenant has refused the landlord reasonable access to the housing accommodation for the purpose of making necessary repairs or improvements required by the laws of the United States, the Commonwealth of Massachusetts, or any subdivision thereof, or for the purpose of inspection as permitted or required by the lease or by law, or for the purpose of showing the housing accommodation to any prospective purchaser or mortagee;

7. The tenant holding at the end of a lease term is a subtenant not approved by the landlord;

8. The landlord seeks to recover possession in good faith for the use and occupancy of himself, or his children, parents, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law provided, however, that the provisions of this subsection shall not apply to a controlled or vacancy decontrolled housing accommodation

(a) which is occupied by a tenant entitled to protections under paragraph k. of subsection 10-2.10 or

(b) for which a master deed was or articles of organization were duly recorded after May 4, 1988, pursuant to General Laws chapters 183A, 156B, 157 or 157B.

Notwithstanding any other provisions of this section, including, but not limited to, the preceding sentence and paragraph k. of subsection 10-2.10, the Board shall issue a certificate of eviction to the owner of a condominium or cooperative housing accommodation who has satisfied the Board that the following requirements have been met:

(c) The owner legally occupied the housing accommodation continuously for at least one year as his or her principal residence after conversion or removal; and

(d) The owner subsequently rented the housing accommodation to a tenant; and

(e) All the legal owners demonstrate that they, in good faith, intend to reside in the housing accommodation as their principal residence.

9. The landlord seeks to recover possession to demolish the same in compliance with a lawful government order;

10. Recovery of possession in order to remove a controlled or decontrolled housing accommodation shall not be a valid reason to recover possession of a housing accommodation occupied by a tenant protected by paragraph k. of subsection 10-2.10 or of any controlled or decontrolled housing accommodation for which a master deed was or articles of organization were duly recorded after May 4, 1988 pursuant to General Laws Chapters 183A, 156B, 157 or 157B.

11. The landlord seeks to recover possession for any other just cause, provided that his purpose is not in conflict with the provisions and purposes of this section.

A landlord seeking to recover possession of a controlled or vacancy decontrolled housing accommodation shall apply to the Board for a certificate of eviction. Upon receipt of such an application, the Board by first class mail, shall send a copy of the application to the tenant of the controlled or vacancy decontrolled housing accommodation together with a notification of all rights and procedures available pursuant to this subsection. If the Board finds that the facts attested to in the landlord's petition are valid and in compliance with paragraph a., the certificate of eviction shall be issued.

A landlord who seeks to recover possession of a controlled or vacancy decontrolled housing accommodation without a certificate of eviction shall be deemed to have violated this section, and the Board shall initiate a criminal prosecution for such violation. Notwithstanding the provisions of this paragraph, the United States, the Commonwealth of Massachusetts, or any agency or political subdivision thereof may maintain an action or proceeding to recover possession of any housing accommodation operated by it where such action or proceeding is authorized by the statute or regulation under which such accommodations are administered.

The provisions of this paragraph shall be construed as additional restrictions upon the right to recover possession of a controlled or vacancy decontrolled housing accommodation. No provision of this subsection shall entitle any person to recover possession of such a controlled or vacancy decontrolled housing accommodation. Upon a decision of the Board concerning the granting or withholding of a certificate of eviction, either party concerned may appeal to the District Court Department of the Trial Courts for the judicial district within which the controlled or vacancy decontrolled housing accommodation is located or to the Housing Court Department of the Trial Courts, City of Boston Division, within thirty (30) calendar days after such decision.

b. Notwithstanding the provisions of the preceding paragraph, a landlord may seek to recover possession of a vacancy decontrolled housing accommodation without applying for a certificate of eviction if the sole basis for the eviction is nonpayment of rent and if the notice to quit and complaint are served and filed after July 1, 1988. Provided, however, that in any action brought pursuant to this paragraph, if the trial court finds that the landlord's claims were wholly insubstantial, frivolous or not advanced in good faith, then damages shall be awarded to the tenant pursuant to Massachusetts General Laws Chapter 231, S. 6F and any other applicable statutes. (Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 9; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33; Ord. 1987 c. 6 § 3; Ord. 1988 c. 9 §§ [A], [B], [C], [D], [E])

10-2.9A Rights of Elderly and Handicapped Tenants to Have Pets.

a. Notwithstanding the provisions of any lease or rental agreement to the contrary, no owner of a controlled or decon-

trolled housing accommodation subject to the jurisdiction of the board may, as a condition of tenancy or otherwise, prohibit or prevent any elderly or handicapped tenant from owning common household pets or having such pets living in the tenant's unit. Furthermore, no owner of a controlled or decontrolled housing accommodation shall have the right to restrict or discriminate against any elderly or handicapped tenant in connection with admission to, or continued occupancy of, such housing by reason of the tenant's ownership of common household pets or the presence of such pets in that tenant's unit. The owner of such housing accommodations shall have the right to promulgate reasonable requirements regarding the number of common household pets allowed in each unit, standards of pet care, licensing, inoculation, and leash laws, similar to those developed by the Massachusetts Society for the Prevention of Cruelty to Animals, and consistent with State and local laws on animal control, such as G.L. c. 140 — 136A-17AD. Nothing in this provision shall bar the owner from requiring the removal of any pet if the pet's conduct or condition is determined to constitute a nuisance or a threat to the health or safety of other occupants of the building, structure, or development of other persons in the community where the housing accommodation is located.

b. *Scope*. Notwithstanding the exemptions found in subsection 10-2.1, the definition of "housing accommodation", all housing accommodations in mobile homes, in mobile home parks, and in structures having three (3) or more dwellings, excluding motels, hotels, or inns, and excluding housing accommodations in structures having three (3) dwelling units, one (1) of which is occupied by all the legal and beneficial owners of the structure as their principal residence, shall be subject to the provisions of this subsection. (Ord. 1988 c. 13 §§ 1,2)

10-2.10 Condominium and Cooperative Conversion; Evictions.

a. All condominium and cooperative conversion evictions from housing accommodations as defined in subsection 10-2.1 be governed by the eviction control provisions of subsection 10-2.9 as modified by the provisions of these subsections 10-2.10 and 10-2.11.

b. *Presumption*. For purposes of this section, any action to recover possession of housing accommodation shall be presumed by the Board to be a condominium or cooperative conversion eviction where any one or more of the following has occurred:

1. Any dwelling unit in any building or structure in which the housing accommodation is located has been sold as a condominium or cooperative unit; or

2. A master deed or articles of organization for the building or structure in which the housing accommodation is located for which recovery of possession is sought has been duly recorded pursuant to the provisions of Chapters 156B, 183A, or 157 of the General Laws of the Commonwealth of Massachusetts; or

3. A master deed or articles or organization for the building or structure in which the housing accommodation is located for which recovery of possession is sought is duly recorded pursuant to the provisions of Chapters 183A, 156B, or 157 of said General Laws within one hundred and eight (180) days after an action is brought to recover such possession; or

4. Any tenant of any unit of housing accommodation in the building or structure wherein the unit of housing accommodation is located for which recovery of possession is sought has received any notice required by paragraph c. of this subsection; provided, however, that a landlord may seek to recover possession of a housing accommodation when any of 1, 2, 3, or 4, occurs for purposes other than a condominium or cooperative conversion when the landlord has filed with the Board an affidavit under the penalty of perjury, stating that such eviction is not for the purpose of converting the housing accommodation to a condominium or cooperative unit.

c. *Notices*. No person shall bring any action to recover possession of a housing accommodation for the purpose of a condominium or cooperative conversion until the later of the expiration of the rental housing agreement or one year has elapsed after the date the tenant of such housing accommodation received a written notice of termination of his tenancy; provided, however, that, in the case of a dwelling unit occupied, in whole or in part, by an elderly, handicapped or low- or moderate-income tenant upon the date of the notice, until three (3) years after such date has elapsed. The burden of proving qualification with respect to age, handicap, and income shall rest with the tenant.

All notices given pursuant to this subsection shall be personally served upon the tenant or mailed to the tenant by certified mail, return receipt requested, and shall advise the tenant of the rights and procedures available under this section.

No action to recover possession of a housing accommodation for condominium or coopeerative conversion shall be effective unless a master deed o. articles of organization for the building or structure in which the housing accommodation is located has

been duly recorded pursuant to the provisions of Chapters 183A, 156B or 157 of the General Laws of the Commonwealth of Massachusetts, prior to or within the one-year or three (3) year time period specified in this section for notice to tenant of such housing accommodations. Except with respect to de-controlled housing accommodation, upon expiration of the notice period as provided herein, the landlord must provide proof satisfactory to the Board that he has complied with the provisions of this section with respect to recovery of a housing accommodation in order to convert it to a condominium or a cooperative. If the Board finds that the proof is valid and in compliance with the provisions of this section, a certificate of eviction shall be issued.

If a landlord of a decontrolled housing accommodation seeks to recover possession of such housing accommodation for any reason other than to effect a condominium or cooperative conversion prior to the expiration of the notice period as provided in this subsection, and where appropriate, he has filed with the Board the affidavit prescribed by paragraph b.4 of this subsection, no certificate of eviction shall be required.

Upon expiration of the notice period as provided in this subsection, no landlord of a decontrolled housing accommodation shall be required to obtain a certificate of eviction from the Board as a prerequisite to recovering possession of such decontrolled housing accommodation in order to effect a condominium or cooperative conversion; provided, however, that such landlord shall file with the Board an affidavit, under the penalty of perjury, that he has complied with the requirements imposed by this subsection.

d. *Rent and Rental Housing Agreement Protection.* For any tenant who receives or is entitled to receive as notice as provided

in this subsection, the landlord shall extend such rental housing agreement upon the expiration thereof, such extension or extensions shall be for a period or periods of one year or fraction thereof as shall equal the period of notice to which such tenant is entitled pursuant to the provisions of this subsection. The provisions of such rental housing agreement may not be modified by the landlord except to the extent such modification is required by law and except with respect to the amount of annual rent, any increase in which shall not exceed an amount equal to the sum which would result by multiplying said rent by the percentage increase in the consumer price index during the calendar year immediately preceding the date upon which such rental housing agreement is extended.

e. *Right to Purchase Unit.* Any tenant who receives or is entitled to receive notice pursuant to this section shall be given the right to purchase the dwelling unit he occupied at the time such notice is delivered, for substantially the same or more favorable terms and conditions as are being offered to prospective purchasers. Such tenant may exercise a right of first refusal to purchase such unit by executing a purchase and sale agreement prior to the expiration of ninety (90) days after the date of receiving a copy of the purchase and sale agreement properly executed by the person offering the unit for sale.

f. *Relocation Benefit.* Any tenant who receives or is entitled to receive a notice pursuant to this subsection, who chooses not to exercise the right to purchase the unit he or she occupies pursuant to paragraph e. hereof or who does not purchase another unit or units in the same building or buildings, shall, upon vacating said unit within the appropriate notice period as established by paragraphs c. and g. hereof, be paid by the landlord a relocation expense allowance of seven hundred fifty ($750.00) dollars per housing accommodation; provided, how-

ever, that if such tenant is elderly, handicapped or of low or moderate income, said relocation expense allowance shall be one thousand ($1,000.00) dollars per housing accommodation.

g. *Relocation Service to Elderly, Handicapped, or Low- or Moderate-Income Tenants.* Whenever a housing accommodation is converted to the condominium or cooperative form of ownership and such conversion results in the displacement of an elderly, handicapped, or a low- or moderate-income tenant who qualified as such on the date of the notice required by paragraph c. of this subsection, the landlord shall, in addition to paying the relocation expense allowance required by paragraph f. of this subsection, assist said tenant in locating a comparable housing accommodation within the City which rents for a sum which is suitable and appropriate in relation to said tenant's financial condition and annual income. If said tenant has resided in the housing accommodation from which he is being displaced for at least three (3) years, the landlord shall make every reasonable effort to locate such substitute housing accommodation for said tenant within the same neighborhood of the City. If the landlord is unable to locate such substitute housing accommodation for such tenant within the period of notice required by paragraph a. of this subsection, the tenant may petition the Board for an extension of the period of the notice required by paragraph a. The Board may extend such period of notice for low- or moderate-income tenants for up to any additional period of two (2) years; but shall extend such period of notice for an additional period of two (2) years for elderly or handicapped tenants.

h. *Low-Income Tenant, or Low- or Moderate-Income Elderly, or Low- or Moderate-Income Handicapped Tenant.* Notwithstanding all notice periods and extensions thereof, as set forth in this subsection, a "low-income tenant" as defined in

subsection 10-2.1 and any low- or moderate-income elderly or any low-or moderate-income handicapped tenant shall not be evicted because of condominium or cooperative conversions for the duration of this section.

i. Any tenant or tenants who have received a notice of eviction for the purpose of a condominium or cooperative conversion shall be refunded their prepaid rent and security deposits, to the extent permitted under Section 15B of Chapter 186 of the General Laws of the Commonwealth of Massachusetts.

j. During the notice periods set forth in paragraphs c., g. and h. of subsection 10-2.10, all housing accommodations as to which possession is sought for the purpose of a condominium or cooperative conversion shall be assessed for real estate tax purposes as a residential rental premises and not as condominiums or cooperatives.

k.1. Notwithstanding any other provisions of this subsection to the contrary except as provided below in subparagraph 3 of this paragraph k. and as provided in paragraph h. of this subsection no landlord or other person shall bring any action to recover possession of a housing accommodation for purposes of condominium or cooperative conversion occupied by a low or moderate income tenant, as defined in subsection 10-2.1 "Low- or Moderate Income Tenant" or occupied in whole or in part by an elderly tenant as defined in subsection 10-2.1 or a handicapped tenant as defined in subsection 10-2.1 regardless of their income or the income of any other tenant in the housing accommodation unless, prior to March 25, 1987, the landlord or other person has:

(a) Given proper notice to the tenant under this section and regulations promulgated hereto; or

(b) Properly applied to the Rent Equity Board for Condominium/Cooperative Conversion Eviction Packages pursuant to this section and regulations promulgated hereto.

However, if for any reason this subparagraph is held to be invalid by a court of competent jurisdiction, then the provisions of paragraph k., subparagraph 2 shall apply.

2. Notwithstanding any other provisions of this section to the contrary (except as provided in subparagraph 3 of paragraph k. and in paragraph h. of this subsection) no landlord or other person shall bring any action to recover possession of a housing accommodation for purposes of condominium or cooperative conversion occupied by a low or moderate income tenant, as defined in subsection 10-2.1 or occupied in whole or in part by an elderly tenant as defined in subsection 10-2.1 or a handicapped tenant as defined in subsection 10-2.1, regardless of their income or the income of any other tenant in the housing accommodation unless, prior to May 6, 1987, the landlord or other person has:

(a) Given proper notice to the tenant under this subsection and regulations promulgated hereto; or

(b) Properly applied to the Rent Equity Board for Condominium/Cooperative Conversion Eviction Packages pursuant to this section and regulations promulgated hereto.

3. Notwithstanding any other provisions of paragraph k. subparagraphs 1 and 2, the Board may, after the hearing, provide for an exception to the condominium/cooperative evic-

tion ban established by paragraph k. in individual cases if the Board determines that such a ban would cause a substantial hardship except that, consistent with section 10 paragraph h. of this subsection there shall be no exception to the ban for units occupied by low income tenants, and low or moderate income elderly and/or handicapped tenants. In making its determination, the Board shall review and consider relevant factors and shall, at a minimum, make findings on the following factors:

(a) The benefits and detriments to the persons whom this section and this subsection seeks to protect;

(b) The hardships imposed on the tenant[s] residing in the housing accommodation that is to be converted; and

(c) Circumstances demonstrating hardship and inequity to the landlord seeking to bring the eviction or give the notice.

1. Notwithstanding any other provisions of this section, no person shall bring any action to recover possession of a controlled or vacancy decontrolled housing accommodation for the purpose of removal, whether or not a removal permit or a certificate of exception has been issued, if:

1. The tenants are protected pursuant to paragraph i. of this subsection; or

2. If the master deed was or articles of organization were duly recorded after May 4, 1988, pursuant to General Laws chapters 183A, 156B, 157 or 157B. (Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 10; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33; Ord. 1985 c. 11 § 2; Ord. 1986 c. 20 §§ 2, 3, 4, 5; Ord. 1987 c. 6 § 1 [K]; Ord. 1988 c. 9 § 7 [M]

10-2.11 Removal of Housing Accommodations Regulated.

a. *Terms Defined.* All terms used herein shall have the meanings defined in Section 1 of Chapter 34 of the Ordinances of 1984, as amended[1], except that as used herein, the term "housing accommodation" as contained in subsection 10-2.1 shall not include: "mobile homes, trailers, or trailer or mobile lots or lodging, rooming or boarding house units."

b. *Removal of Housing Accommodations Regulated.* Except as provided in this subsection, it shall be unlawful for any owner or other person to remove any housing accommodation unless the Board, after hearing, grants a removal permit. The Board may issue such orders and promulgate such regulations as are necessary to effectuate the purposes of this subsection, and prescribe, consistent with with this subsection, the procedure for applications, notice, hearings and the grant and review of removal permits. Provided, however, that the requirements of this subsection shall not apply to any building or structure containing no more than two (2) dwelling units or containing no more than three (3) dwelling units, one (1) of which is occupied by the owner thereof as his permanent residence consistent with the requirements of subsection 10-2.1 paragraph b. under the definition of "housing accommodation".

c. *Eviction.* Eviction of tenants from controlled or decontrolled housing accommodations is governed by subsection 10-2.9 as modified by subsections 10-2.10 and 10-2.11. Issuance of a removal permit does not relieve any person of compliance with the eviction procedures contained in this section.

d. *Exceptions.* Except as otherwise required by this section including, but not limited to, the requirements contained in subsection 10-2.12 relating to lodging and rooming houses, no removal permit shall be required for the removal of any housing

[1] **Editor's Note:** Refer to subsection 10-2.1.

accommodation for which on or before May 4, 1988, a master condominium deed or articles of organization for the building in which the housing accommodation is located has been duly recorded pursuant to the provisions of General Laws, Chapters 183A, 156B, 157 or 157B. Such recording shall be prima facie evidence of this exception notwithstanding any error or omission in regard thereto, and the Board shall have no authority to issue, and shall not issue, any certificate with regard to this exception.

1. Sale of Transfer After Removal. Once a removal permit has been issued, no additional removal permit is required for subsequent transfers of ownership; provided, however, that all subseqeunt owners shall be subject to the terms of this section and to the effective terms and conditions of any previously issued removal permit.

e. *Removal Procedure.*

1. Generally. A separate removal permit shall be issued for each qualifying housing accommodation. Copies thereof shall be kept on file at the Board and certified copies shall be available upon payment of a reasonable fee.

2. Criteria. In reviewing an application for a removal permit the Board shall consider relevant factors including, without limitation; the aggravation of the shortage of safe, decent and affordable housing accommodations in the City and its neighborhoods which may result from the removal, especially for tenants of low and moderate income, and handicapped or elderly tenants. In making such determination the Board shall review and make findings as to all relevant factors including, without limitation, the following:

(a) The benefits and detriments to the persons whom this section and this subsection seek to protect;

(b) The hardships imposed on the tenant[s] residing in the housing accommodation proposed to be removed;

(c) Circumstances demonstrating hardship and inequity to the applicant seeking a removal permit;

(d) The rate of vacancy in the City of Boston at the time the applicant applies for a removal permit;

(e) Substantiated evidence demonstrating the occurrence at the site of the housing accommodation of arson or a suspicious fire, as defined in subsection 10-2.15.

3. Mandatory Granting of Removal Permit.

(a) The Board shall grant a removal permit where the applicant demonstrates to the Board by sufficient evidence (i) that the applicant is in compliance with all the requirements of this section; and (ii) that tenants who occupy a majority of all of the units in a building or project and who have resided in the building or project for one (1) year or longer prior to the filing of the removal permit application:

(1) Have unequivocably agreed to purchase such building and convert it to a limited equity cooperative pursuant to General Laws, Chapters 156B, 157 and 157B; or

(2) Have unequivocably agreed to purchase their rental units when they are converted to a condominium or cooperative unit and have represented that they are intending in good faith to occupy such units as their principal and permanent residences.

(b) For purposes of determining a "majority" under the previous sub-paragraph, all occupied units in a building or project shall be included and voting shall be done by rental unit with all

of the tenants residing in a rental unit treated as a single tenant. All units in a building or project shall be offered for sale to the residing tenants at the same time, at the same or comparable price.

4. Conditions to be Imposed on Removal Permits. The Board shall impose the following conditions, if applicable, when it grants a removal permit. Nothing in this section shall restrict an owner from conveying his/her interest in any building or property or portion thereof provided that the property shall remain subject to the provisions of this section and to the conditions and terms of the last issued removal permit. Once issued, a removal permit shall not be revoked; however, the Board may subsequently modify the terms of a removal permit in accordance with the procedures set forth in paragraph e, 5(a)-(c) of this subsection, and may take such action as is necessary to enforce the terms of the removal permit, as provided in paragraph f. of this subsection.

(a) Right of First Refusal to Purchase. Any tenant who lives in a housing accommodation for which a removal permit has been granted shall, within sixty (60) days of the date of the grant of the permit or such other time period as shall be established by the Board, be given the right of first refusal to purchase the housing accommodation he/she occupies for substantially the same or more favorable terms and conditions as are being or would be offered to prospective arms length purchasers.

Such tenant may exercise a right of first refusal to purchase such housing accommodation by executing a purchase and sale agreement prior to the expiration of ninety (90) days after the date of receiving a copy of the purchase and sales agreement properly executed by the person offering the housing accommo-

dation for sale. Each time the housing is subsequently offered for sale, the tenant then occupying the housing accommodation shall be offered the right of first refusal to purchase as described above in this section.

(b) Code Compliance. At the time that a removal permit is granted the building must be in, and thereafter, remain in, full compliance with Article II of the State Sanitary Code, the State Building Code, the Boston Fire Prevention Code and any other applicable municipal code, ordinance, or state law, regulating the conditions or occupancy of housing accommodations. Notwithstanding the preceding sentence, if, for good cause, the building is not currently in compliance with any of the above codes, ordinances, or laws, the removal permit must be conditioned upon the applicant's agreement to bring the building and/or unit into such compliance within a specific time period determined reasonable by the applicable enforcement agency.

(c) Maintenance and Repairs. Whenever the housing accommodation is used for rental housing purposes, the owner must designate a person or persons within twenty-five (25) miles of the building to be responsible for maintenance and repairs. The tenant in each unit shall be informed by the owner or his/her agent in writing as to who is responsible for maintenance and repairs, both as to common and individual unit areas, and such notice shall be updated whenever there is a change in tenants or a change in who is responsible for such maintenance:

(d) Rent and Eviction Protections. The granting of a removal permit under this subsection shall not by itself operate to change the classification of the housing accommodation of controlled or vacancy decontrolled and the provisions of this

section as the decontrol under paragraph e. of the definition of "housing accommodation" in subsection 10-2.1 shall continue to be in full force and effect. Nothing herein, however, shall extinguish the right of a landlord after the granting of a removal permit to seek decontrol status of a housing accommodation which is voluntarily vacated within the meaning of said paragraph e. of the definition of "housing accommodation" in subsection 10-2.1.

5. Procedures.

(a) The Board shall consider an application for a removal permit for a controlled or decontrolled housing accommodation, or an application to modify the terms of a removal permit previously issued, upon receipt of an application filed by the landlord, owner or other authorized person. Such application shall be made on a form approved by the Administrator. The Board shall notify the applicant and tenant of the receipt of an application and of the right of either party to request a hearing in writing within fifteen (15) calendar days of the date of such notice. At any time, the Board may, on its own initiative, order a hearing on any application. If a hearing is timely requested by either party, or if the action is undertaken on the initiative of the Board, notice of the time and place of the hearing shall be furnished to the applicant and tenant and the hearing shall be conducted before a designee of the Board. Hearings, final decision and notification of the final decision to the applicant relative to permits shall occur within sixty (60) days of the filing of the request unless the parties otherwise agree. The Board may consolidate applications relating to housing accommodations in the same building or development. The Board may conduct a single hearing on all such consolidated applications. The Administrator may designate a person or persons to participate in a removal proceeding, where appro-

priate, in order to further the provisions and purposes of this section and to serve the public interest.

(b) Removal permit hearings shall be conducted in accordance with the provisions of Section 11 of Chapter 30A of the General Laws except that requirements (7) and (8) of such Section 11 shall not apply to such hearings.

(c) Notwithstanding any other provision of this section, if a decision regarding a removal permit has been made with regard to such controlled or decontrolled housing accommodation within the preceding twelve (12) months, the Board may, without holding a hearing, refuse to grant a removal permit for that housing accommodation or may dismiss any such application. In addition, if the application is not in conformance with the filing requirement of this section or applicable regulations, the Administrator may administratively dismiss such application without holding a hearing.

f. *Enforcement*. All of the remedies provided in subsections 10-2.16 through 10-2.19 of this section shall be available to the Board for purposes of enforcing subsection 10-2.11. (Ord. 1988 c. 9 § 8).

10-2.12 Permits for Removal/Conservations of Housing Accommodations in Lodging Houses and Rooming Houses.

a. *General Rule*. Notwithstanding any other Statute, Ordinance, Code or Law to the contrary, no person shall remove any occupied or vacant, controlled or decontrolled lodging house unit from actual or potential rental housing use, without first obtaining a removal/conversion permit from the Board. Such provisions shall apply whether or not there is a license for

such lodging house. The Board may establish reasonable regulations governing the criteria listed in part c. of this subsection and the procedures to be followed regarding application for an issuance of removal/conversion permits. Notwithstanding anything to the contrary contained herein, any lodging house unit, or any lodging house building or structure owned by an educational institution on or before March 30, 1988 and now or hereafter used by such educational institution for dormitory or student housing purposes shall be exempt from the removal permit requirement. Such use shall not constitute a removal.

Further, notwithstanding anything to the contrary contained herein, lodging house units which are newly constructed or converted to lodging house use after the effective date of this subsection 1 and which have not been rented or offered for rent previously as lodging house units shall be exempt from the lodging house removal permit requirement. Said exemption shall have no effect on the operation of all other ordinances and regulations.

b. *Definitions*. See definition for "Dormitory or Student Housing", "Lodging House" and "Lodging House Unit" in subsections 10-2.1

c. *Removal Permit Criteria*. The Board, in determining whether to grant or deny a Removal/ Conversion Permit shall consider the aggravation of the shortage of safe, decent and affordable rental housing units, especially lodging house units, in the City and its neighborhoods which may result from the removal/conversion, especially for low to moderate income, handicapped or elderly tenants.

1. In making such determination, the Board, in its discretion, shall make findings on any or all of the following factors:

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[1] **Editor's Note:** This subsection (ordinance) was adopted by the City Council on May 4, 1988 and approved by the Mayor on May 20, 1988.

(a) The benefits and detriments to the persons whom the ordinance and this subsection seek to protect;

(b) The hardships imposed on the tenant[s] residing in the lodging house units proposed to be removed or converted;

(c) Circumstances demonstrating hardship and inequity to the applicant seeking a permit;

(d) The rate of vacancy in the City of Boston at the time the applicant applies for a permit;

(e) Whether the majority of the tenants are elderly, as defined in subsection 10-2.1 or handicapped, as defined in subsection 10-2.1 or low or moderate income as defined in subsection 10-2.1 or low income as defined in subsection 10-2.1;

(f) Any other relevant factors.

(2) Any Removal/Conversion Permit granted by the Board may be subject to such terms and conditions which the Board may require in furtherance of the purposes of the subsection.

d. *Hearings*. Removal/conversion hearing shall be conducted in accordance with the provisions of Section 11 of Chapter 30A of the General Laws except that requirements (7) and (8) of such Section 11 shall not apply to such hearings.

e. *Judicial Review*. All decisions of the Board with regard to removal/conversion permits may be appealed to the District Court Department of the Trial Court for the judicial district within which the housing accommodation is located or the Housing Court Department of the Trial Court, City of Boston Division, within thirty (30) days after the notice of such decision.

f. *Enforcement.*

1. The Superior Court Department of the Trial Court and the Housing Court Department of the Trial Court, City of Boston, shall severally have jurisdiction to enforce the provisions of this subsection and any rules and regulations promulgated pursuant to this subsection, and may restrain or enjoin violations of this subsection.

(2) The Rent Equity Board shall give notice of a hearing within fourteen (14) days from the filing of a petition for a removal permit and shall hold a removal permit hearing within thirty (30) days from the date of the filing of the petition. The Rent Board shall make a decision within forty-five (45) days from the filing of the petition. Should the Rent Board fail to meet the schedule set forth herein, parties may seek an order from the Superior Court or the Housing Court Department of the Trial Court, City of Boston Division requesting an order that the Rent Equity Board make an expedited determination of the petition. Upon finding that the Rent Board has failed to comply with the schedule set forth herein, the court shall order an expedited hearing and determination of the petition.

g. Transition. All actions, cases, Board decisions decided or pending under the June 16, 1987 Amendment entitled "PERMITS FOR REMOVAL/CONVERSION OF HOUSING ACCOMMODATIONS IN LODGING AND ROOMING HOUSES" shall be governed as provided for in this subsection:

1. All decisions rendered by the Board under the provisions of June 16, 1987 Amendment shall remain in full force and effect under the provisions of this Amendment.

2. All matters pending before the Board as of the effective date of this subsection[1] shall remain in full force and effect but shall be processed in accordance with the provisions of this Amendment.

3. The provisions of the June 16, 1987 Amendment, shall be treated as remaining in force and effect for the purpose of sustaining in court any proper suit, action or prosecution with respect to any right, liability or offense arising under such Amendment. However, any such suit, action or prosecution shall be processed under the provisions of this Amendment.

h. *Effective Date*. This Amendment to Chapter 34 of the Ordinances of 1984[2] shall be effective immediately upon passage. Matters decided by or pending before the Board and matters decided or pending in Court shall be treated in accordance with part g.

i. *Severability*. The provisions of this Amendment and the Ordinance it amends (Section 10-2 of the City of Boston Code, Ordinances) shall be severable and if any one or more provisions, or parts or subparts thereof, shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction the decision of such court shall not affect or impair any of the remaining provisions or parts thereof. (Ord. 1987 c. 6 § 5; Ord. 1988 c. 4 § (i)-(iii); Ord. 1988 c. 7 § 1).

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[1] **Editor's Note:** This subsection (ordinance) was adopted by the City Council on May 4, 1988 and approved by the Mayor on May 20, 1988.

[2] **Editor's Note:** Chapter 34 of the Ordinance of 1984 is codified as Section 10-2.

10-2.13 Permits for Removal of Mobile Home Accommodations in Mobile Home Parks.

a. *Removal Permits Required.*

1. It shall be unlawful for an owner of a mobile home park to remove any mobile home accommodation in a mobile home park or discontinue the use of part or all of the land owned and licensed as a mobile home park without having first obtained a mobile home removal permit from the Rent Equity Board subject to the provision contained herein.

2. Such provisions shall apply whether or not the license for such premises is still in effect. The Board may establish reasonable regulations governing the criteria and the procedures to be followed regarding application for and issuance of mobile home removal permits.

b. *Permit Criteria.* In determining whether to grant a removal permit, the Board shall consider the aggravation of the shortage of safe, decent and affordable mobile home park accommodations in Boston, which may result from the discontinuance of use as a mobile home park, especially for tenants of low or moderate income or elderly persons on fixed incomes. In making such a determination the Board shall review and make findings as to all relevant factors including, without limitation, the following:

1. The benefits and detriments to the persons whom this subsection seeks to protect;

2. The hardships imposed on the tenant[s] residing in the controlled or decontrolled unit proposed to be removed;

3. Circumstances demonstrating hardship and inequity to the applicant seeking a mobile home removal permit;

4. The rate of vacancy in the City of Boston at the time of the applicant applies for a mobile home removal permit.

c. *Removal Procedure.*

1. The Board shall consider an application for a mobile home removal permit for a mobile home park upon receipt of an application filed by the landlord or other authorized person.

2. The Board shall schedule a public hearing within sixty (60) days of receipt of the application. The Board shall notify the applicant and all residents of the mobile home park of the hearing.

3. The mobile home removal permit hearings shall be conducted in accordance with the provisions of Section 11 of Chapter 30A of the General Laws except that requirements (7) and (8) of such Section 11 shall not apply to such hearings.

4. The provisions of Section Five (ii), (iii) and (iv) of Chapter 6, the Ordinances of 1986 shall apply to such hearings.[1] (Ord. 1987 c. 12 § 13; Ord. 1988 c. 9 § 9).

10-2.14 Duties of the Board.

Certified copies of all policies, rules, and regulations of the Board shall be forwarded to the City Clerk who shall forward them forthwith to the City Council. (Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 11; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33).

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[1] **Editor's Note:** Chapter 6 of the Ordinances of 1987, Section 5, is codified as subsection 10-2.12.

10-2.15 Suspicious Fires.

In the event that any owner of property under conversion to condominiums or cooperatives suffers loss in three (3) or more such properties because of fire, the records of the Building Department and the Assessing Department shall indicate such conditions by the addition of the plans, maps, printouts, and records of the City of the words "loss by fire" on the affected structures. Any fire in a unit undergoing conversion determined by the Fire Commissioner to be a suspicious origin shall be identified in said plans, maps, printouts, and records by the addition of the words "suspicious fire."
(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 12; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33).

10-2.16 Civil Remedies.

a. Any person who demands, accepts, receives, or retains any payment of rent in excess of the maximum lawful rent, in violation of the provisions of this section, or any rule, regulation or order hereunder promulgated, shall be liable as hereinafter provided to the person from whom such payment is demanded, accepted, received, or retained, or to the City for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of one hundred ($100.00) dollars, or not more than three (3) times the amount by which the payment or payments demanded, accepted, received, or retained exceed the maximum rent which could be lawfully demanded, accepted, received, or retained, whichever is the greater; provided, however, that if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation, the amount of such liquidated damages shall be the amount of the overcharge or overcharges.

b. If the person from whom such payment is demanded, accepted, received, or retained in violation of the provisions of this section or any rule, regulation, or order hereunder promulgated, fails to bring an action under this section within thirty (30) calendar days from the date of the occurrences of the violation, the Board may settle the claim arising out of the violation or bring such action upon its own initiative. Settlement by the Board shall thereafter bar any other person from bringing action for the violation or violations with regard to which a settlement has been reached. In the event the Board settles said claim, it shall be entitled to retain the costs it incurred in the settlement thereof, and the person against whom the violation has been committed shall be entitled to the remainder. In the event the City initiates action pursuant to the provisions of this subsection, it shall be entitled to receive attorneys' fees and costs pursuant to the provisions of paragraph a. and the person against whom the violation was committed shall be awarded liquidated damages pursuant to the provisions of said paragraph a.

c. A judgment for damages or on the merits in any action initiated pursuant to this subsection shall be a bar to any recovery pursuant to this subsection or in any other action against the same defendant on account of any violation with respect to the same person prior to the initiation of the action in which such judgment was rendered. Action to recover liquidated damages pursuant to the provisions of this subsection shall not be brought later than one year after the date of violation. A single action for damages pursuant to the provisions of this subsection may include all violations of the provisions of this subsection committed by the same defendant against the same person.

d. The District Court Department of the Trial Courts for the judicial district within which the housing accommodation

affected is located and the Housing Court Department of the Trial Courts, City of Boston Division, shall severally have concurrent original jurisdiction over all accounts and complaints initiated pursuant to this subsection.
(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 13; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33).

10-2.17 Criminal Penalties.

a. It shall be unlawful for any person to demand, accept, receive, or retain any rent for the use or occupancy of any housing accommodation in excess of the maximum rent prescribed therefor pursuant to the provisions of this section or any rule, regulation or order hereunder promulgated, or otherwise to do or omit to do any action in violation of the provisions of this section or the rules, regulations or orders hereunder promulgated. It shall be unlawful for any person by act or omission knowingly to engage in any conduct tending to deprive a tenant of, or to prevent a tenant from exercising, any right conferred by this section, including without limitation, any such conduct tending to deprive a tenant of the peace, comfort, or enjoyment of a housing accommodation in violation of this section and any such conduct intended to result in substantial inconvenience or amounting to a violation of privacy, harassment, intimidation, threat, or coercion.

(b) It shall be unlawful for any person to demand, accept, receive, or retain any payment which exceeds the maximum lawful rent for one month as a finder's fee or service charge for the opportunity to examine or lease any housing accommodation; provided, however, no finder's fee or service charge shall be lawful unless the person from whom the payment is demanded, accepted, received or retained actually rents or

leases the housing accommodation with regard to which payment of said fee or said charge has been demanded, accepted, received or retained.

c. Whoever willfully violates any provision of this section or any rule, regulation or order hereunder promulgated or whoever knowingly makes any false statement in any testimony before the Board or whoever knowingly supplies any false information or knowingly makes false statement to, or files a false affidavit with, the Board shall be punished by a fine of not more than five hundred ($500.00) dollars or by imprisonment for not more than ninety (90) days or both; provided, however, that in the case of a second or subsequent offense, such person shall be punished by a fine of not more than three thousand ($3,000.00) dollars or by imprisonment for not more than one year or both.

d. The District Court Department of the Trial Courts for the Judicial District within which the housing accommodation affected is located and the Housing Court Department of the Trial Courts, City of Boston Division, shall severally have concurrent jurisdiction over all such actions and complaints. (Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 14; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33).

10-1.18 Judicial Review.

All decisions of the Board, except as otherwise provided in this subsection, may be appealed to the District Court Department of the Trial Courts for the judicial district within which the housing accommodation is located or to the Housing Court Department of the Trial Courts, City of Boston Division, within thirty (30) calendar days after the date of such decision; pro-

vided, however, that this section shall not be construed to provide a right of appeal of a general adjustment decision pursuant to subsection 10-2.5a.

(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 15; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33).

10-2.19 Injunctions.

The Superior Court Department of the Trial Courts and the Housing Court Department of the Trial Courts, City of Boston Division, shall severally have jurisdiction to restrain by injunction any violation of this section or any rule, regulation, or order hereunder promulgated.

(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 16; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33).

10-2.20 Effective Date and Duration.

This section shall become effective as of the date signed by the Mayor and shall remain in effect until December 31, 2004 or until a prior determination by the Mayor and City Council that the present rental housing emergency no longer exists.

(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 17; Ord. 1969 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33).

10-2.21 Constitutional Construction.

The provisions of this section are severable, and if any of its provisions shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 18; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33; Ord. 1993 c. 7).

10-2.22 Transitional Provisions.

a. *Scope.* Repeal of Chapter 1. Except as otherwise provided herein, Chapter 1 of the Ordinances of 1983, as amended, is hereby repealed as of the effective date of this ordinance. All matters initiated under Chapter 1 which are pending before or decided by the Board, or pending before any court, or any valid condominium or cooperative conversion eviction notice or related offer, or additional year notice ruling initiated under the provisions of Chapter 1 or any rule, regulation or order thereunder promulgated shall be governed as provided for in this subsection.

b. *Notices Sent and Matters Pending Before or Decided by the Board.*

1. All decisions rendered by the Board under the provisions of Chapter 1 of the Ordinances of 1983, as amended, shall remain in full force and effect under the provisions of this section.

2. Notwithstanding any provisions of this section to the contrary, all matters pending before the Board as of the effective date of this section shall remain in full force and effect but shall be processed in accordance with the provisions of this section.

3. The provisions of said Chapter 1 of the Ordinances of 1983, as amended, shall be treated as remaining in force and effect for the purpose of sustaining in court any proper suit,

action or prosecution with respect to any right, liability or offense arising under such section.

4. All valid condominium or cooperative conversion eviction notices or related offers given prior to October 3, 1984 pursuant to Chapter 1 of the Ordinances of 1983, as amended, and the applicable regulations thereunder, shall be treated as remaining in full force and effect where such notices or offers comply with the provisions of said Chapter 1 of the Ordinances of 1983, as amended.

(a) Condominium or cooperative conversion eviction notices or related offers given pursuant to Chapter 1 of the Ordinances of 1983 to tenants qualifying as low income, low or moderate income elderly, or low or moderate income handicapped under the provisions of this ordinance on the date such notice or offer was received shall be null and void and those tenants shall be entitled to the eviction ban protections of subsection 10-2.10f. of this section.

(b) The provisions of paragraph (a) above shall not apply where prior to October 3, 1984 a binding purchase and sales agreement has been executed for a specific unit and a deed has been duly recorded transferring title of such unit to an owner who certifies under oath to the Board within forty-five (45) days of the effective date of this ordinance that he or she intends to occupy the unit as his or her permanent residence. If any person so certifying shall fail to occupy said unit as his or her principal residence and place of domicile within ninety (90) days of the date the unit becomes vacant, such failure shall be determined an unfair and deceptive practice and a violation of this Chapter. Whoever willfully and falsely certifies that they intend to be an owner occupant, under the provisions of this subsection, shall be subject to a fine of two

hundred ($200.00) dollars per day for each day the offense exists or by imprisonment for a period of not to exceed one (1) year or both.
(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 19; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33; Ord. 1985 c. 5 § 1).

10-2.23 Renumbering Allowed by City Clerk.

The sections of this ordinance and references thereto may be renumbered by the City Clerk for the purpose only of conforming it to the City of Boston Code.
(Ord. 1972 c. 19; Ord. 1974 c. 13; CBC 1975 Ord. T10 § 20; Ord. 1979 cs. 29, 37; Ord. 1981 c. 8; Ord. 1982 cs. 15, 16, 17, 26, 37; Ord. 1983 cs. 1, 9, 17, 23, 33; Ord. 1984 cs. 1, 7, 29-34).

A true copy City of Boston Code, Ordinances.
Chapter 10, Section 2-2.23.

Attest

_____

City Clerk

APPENDIX B.

[DOCUMENT NO. 66 – 1984]

ORDINANCES OF 1984, CHAPTER 34

REGULATING CERTAIN RESIDENTIAL RENTS, EVICTIONS, AND CONVERSIONS ("Rental Housing Equity Ordinance").

In the Year Nineteen Hundred and Eighty-four

Be it ordained by the City Council of Boston, as follows:

Chapter 1 of the Ordinance of 1983, as amended most recently by the City Council on October 3 and October 17, 1984, is hereby repealed, and replaced with the following new language:

Whereas, A serious public emergency exists with respect to the housing of a substantial number of residents of the City of Boston, particularly those who are elderly, handicapped, and who have low or moderate annual incomes; and

Whereas, The deterioration and demolition of existing housing is a significant problem which has not been solved by the construction or substantial rehabilitation of housing, leaving many citizens of the city, particularly those who are elderly, handicapped, or who have low or moderate annual incomes, without sufficient access to safe, decent, and reasonably priced rental housing accommodations; and

Whereas, The imposition of controls upon rents, evictions, and the conversion of existing rental housing to condominium or cooperative ownership may restrict the incentives necessary to insure private investment in the modernization and rehabilitation of existing housing and the contruction of new, nonsubsidized housing; and

Whereas, Homeownership creates an interest in real estate which tends to contribute to the maintenance and preservation of housing and to an increase in real estate taxes which has a salutary effect upon the City of Boston and its residents, and the City Council should, therefore, encourage an increase in such ownership; and

Whereas, At present in the City of Boston there is conversion of multiple unit rental housing occupied by tenants to condominium or cooperative units occupied by individual owners thereof; and

Whereas, Notwithstanding the general good accomplished by such increase in homeownership, many people of limited means, particularly, but not limited to, the elderly and the handicapped, may have difficulty in obtaining alternative rental housing at prices which they can afford when evicted for a condominium or cooperative conversion; and

Whereas, The untoward effects of condominium and cooperative conversion evictions on tenants who are not elderly, handicapped or of low income can adequately be mitigated by providing potentially displaced tenants with sufficient time to examine the housing market, evaluate available housing alternatives, formulate future housing plans, and by requiring those owners of multiple unit rental housing who convert to condominiums or cooperatives to provide meaningful assistance to such tenants; and

Whereas, It is in the interest of the City of Boston and its residents for the City Council to protect the mutuality of interest between the city's tenants and landlords by controlling rents

and evictions and conversions of existing rental housing units to condominiums or cooperative ownership in a fashion which prevents arbitrary and capricious increases in rents, evictions without just cause, and displacement of tenants whose choices of housing accommodations are limited, and to do so in a fashion which will stimulate investment in the modernization and rehabilitation of the city's existing stock of rental housing and in new rental housing construction;

Now, Therefore, pursuant to the authority vested in it by law, including, without limitation, Article 2, as amended, and Article 47 of the Amendments to the Constitution of the Commonwealth of Massachusetts and chapter 797 of the Acts of 1969, as amended by chapter 863 of the Acts of 1970 and by chapter 843 of the Acts of 1971, be it declared by the City Council of the City of Boston that a substantial and critical shortage of safe, decent, and reasonably priced rental housing units exists, particularly for those who are elderly, handicapped or who have low or moderate annual incomes, because of deterioration and demolition of existing housing and an insufficient supply of new housing, and that the ordinances which are now in effect which were designed to correct this shortage must be revised and extended in order for the city to fulfill its responsibility for ameliorating this shortage in a fashion which balances the interests between tenants and landlords fairly and equitably; and, also,

Pursuant to the same authority the following is declared to be in the public interest:

APPENDIX C.

CHAP. 797 AN ACT CONFIRMING THE AUTHORITY OF THE CITY COUNCIL OF THE CITY OF BOSTON TO IMPOSE A RENT CONTROL LAW IN THE CITY OF BOSTON.

Whereas, The general court finds and declares that a serious public emergency exists with respect to the housing of a substantial number of the citizens in the city of Boston, which emergency has resulted in a substantial shortage of rental housing accommodations; that, unless residential rents and eviction of tenants are regulated and controlled, such emergency and the inflationary pressures resulting therefrom will produce serious threats to the public health, safety and general welfare of the citizens of said city; that such emergency should be met by the commonwealth immediately and with due regard for the rights and responsibilities of the city of Boston.

Be it enacted, etc., as follows:

Notwithstanding any provision of law to the contrary, when public exigency, emergency or distress exists in the city of Boston, the city council of said city, with the approval of the mayor, may by ordinance, control the rent for the use or occupancy of housing accommodations in structures having four or more dwelling units, excluding motels, hotels or inns, and may create a rent board and empower it to establish as the maximum rent for housing accommodations in the city of Boston the rent in effect therefor on the first day of December, nineteen hundred and sixty-eight, or such higher amount as may be necessary to remove hardships or correct inequities. Upon a decision by the official city of Boston agency concerned with the regulation of the rents in a housing accommodation after proper hearing, either party concerned may appeal to the district court within the jurisdiction of the location of that housing accommodation.

Approved August 24, 1969.

APPENDIX D.

CHAP. 863 AN ACT RELATIVE TO THE CONTROL OF RENTS AND EVICTIONS IN THE CITY OF BOSTON.

Be it enacted, etc., as follows:

SECTION 1. The general court finds and declares that a serious public emergency declared in chapter seven hundred and ninety-seven of the acts of nineteen hundred and sixty-nine continues to exist in the city of Boston with respect to the housing of a substantial number of the citizens of said city, which emergency continues to be marked by a substantial shortage or rental housing accommodations; that, unless residential rents continue to be regulated and controlled and unless evictions of tenants are regulated and controlled, such emergency and the inflationary pressures resulting therefrom will produce serious threats to the public health, safety and general welfare of the citizens of said city; and that such emergency should be met immediately with due regard to for the rights and responsibilities of the city of Boston.

SECTION 2. Chapter 797 of the acts of 1969 is hereby amended by striking out the first sentence and inserting in place thereof the following sentences: — So long as the current public exigency, emergency or distress continues in the city of Boston, said city may by ordinance control the rent for the use or occupancy of housing accommodations in structures having three or more dwelling units, excluding motels, hotels or inns, and excluding housing accommodations in structures having three dwelling units one of which is occupied by the owner thereof as his permanent residence, and may create a board and empower it to establish as the maximum rent for such housing accommodations the rent in effect therefor on December the first, nineteen hundred and sixty-eight; provided, however, that said ordinance shall authorize the board, by order, to make such individual adjustments in such maximum rents as may be necessary to remove hardships or to correct

other inequities, and may authorize the board by regulation to make such general adjustments in such maximum rents as may be necessary to remove hardships or to correct other inequities. In making individual and general adjustments to remove hardships or to correct other inequities, said board shall observe the principle of maintaining maximum rents for such housing accommodations at levels which will yield to landlords a fair net operating income from such housing accommodations. In determining whether the maximum rent for such housing accommodations yields a fair net operating income from such housing accommodations, due consideration shall be given to the following, among other relevant factors: (1) increases in property taxes; (2) unavoidable increases in operating and maintenance expenses; (3) major capital improvement of the housing accommodations as distinguished from ordinary repair, replacement and maintenance; (4) increases or decreases in living space, services, furniture, furnishings or equipment; and (5) substantial deterioration of the housing accommodations, other than ordinary wear and tear, or failure to perform ordinary repair, replacement or maintenance.

SECTION 3. Said chapter 797 is hereby further amended by adding the following paragraphs: —

Such ordinance may also provide that: (*a*) No person shall bring any action to recover possession of a housing accommodation unless:

(1) the tenant has failed to pay the rent to which the landlord is entitled;

(2) the tenant has violated an obligation or covenant of his tenancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation after having received written notice thereof from the landlord;

(3) the tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the housing accommodation, or is creating a substantial interference with the comfort,

safety, or enjoyment of the landlord or other occupants of the same or any adjacent accommodation;

(4) the tenant is convicted of using or permitting a housing accommodation to be used for any illegal purpose;

(5) the tenant, who had a written lease or rental agreement which terminated on or after the passage of this act has refused, after written request or demand by the landlord, to execute a written extension or renewal thereof for a further term of like duration and in such terms as are not inconsistent with or violative of any provisions of this act;

(6) the tenant has refused the landlord reasonable access to the housing accommodation for the purpose of making necessary repairs or improvements required by the laws of the United States, the commonwealth, or any subdivision thereof, or for the purpose of inspection as permitted or required by the lease or by law, or for the purpose of showing the housing accommodation to any prospective purchaser or mortgagee;

(7) the tenant holding at the end of a lease term is a subtenant not approved by the landlord;

(8) the landlord seeks to recover possession in good faith for use and occupancy of himself, or his children, parents, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law;

(9) the landlord seeks to recover possession to demolish or otherwise remove the housing accommodations from housing use;

(10) the landlord seeks to recover possession for any other just cause, provided that his purpose is not in conflict with the provisions and purposes of this act.

(*b*) A landlord seeking to recover possession of a housing accommodation shall apply to the board for a certificate of eviction. Upon receipt of such an application, the board shall send a copy of the petition to the tenant of the housing accommodation together with a notification of all rights and proce-

dures available under this section. If the board finds that the facts attested to in the landlord's petition are valid and in compliance with paragraph (a), the certificate of eviction shall be issued. Any application for a certificate of eviction shall be deemed to have been granted unless denied by the board within thirty days of such application or such shorter period as may be determined by ordinance.

(*c*) A landlord who seeks to recover possession of a housing accommodation without a certificate of eviction shall be deemed to have violated such ordinance, and the board shall initiate a criminal prosecution for such violation.

Notwithstanding the provisions of this section the United States, the commonwealth or any agency or political subdivision thereof may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulation under which such accommodations are administered.

The provisions of this section shall be construed as additional restrictions on the right to recover possession of a housing accommodation. No provision of this section shall entitle any person to recover possession of such a housing accommodation. Upon a decision of said board concerning the granting or withholding of a certificate of eviction, either party concerned may appeal to the district court within the jurisdiction of which the housing accommodation involved is located.

Civil Remedies. (*a*) Any person who demands, accepts, receives or retains any payment of rent in excess of the maximum lawful rent, in violation of the provisions of this act or any regulation, order or ordinance hereunder promulgated, shall be liable as hereinafter provided to the person from whom such payment is demanded, accepted, received or retained, or to the city for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the

amount of one hundred dollars, or not more than three times the amount by which the payment or payments demanded, accepted, received or retained exceed the maximum rent which could be lawfully demanded, accepted, received or retained, whichever is the greater; provided that if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation, the amount of such liquidated damages shall be the amount of the overcharge or overcharges.

(*b*) If the person from whom such payment is demanded, accepted, received or retained in violation of the provisions of this act or any rule, regulation or ordinance hereunder promulgated fails to bring an action under this section within thirty days from the date of the occurrence of the violation, the board may settle the claim arising out of the violation or bring such action. Settlement by the board shall thereafter bar any other person from bringing action for the violation or violations with regard to which a settlement has been reached. In the event the board settles such claim, it shall be entitled to retain the costs it incurred in the settlement thereof, and the person against whom the violation has been committed shall be entitled to the remainder. In the event the city brings action under the provisions of this section, it shall be entitled to receive attorney's fees and costs under the provisions of paragraph (*a*) and the person against whom the violation was committed shall be awarded liquidated damages under the provisions of said paragraph (*a*).

(*c*) A judgment for damages or on the merits in any action under this section shall be a bar to any recovery under this section in any other action against the same defendant on account of any violation with respect to the same person prior to the institution of the action in which such judgment was rendered. Action to recover liquidated damages under the provisions of this section shall not be brought later than one year

after the date of the violation. A single action for damages under the provisions of this section may include all violations of the provisions of this section committed by the same defendant against the same person.

Criminal Penalties. (*a*) It shall be unlawful for any person to demand, accept, receive or retain any rent for the use or occupancy of any housing accommodations in excess of the maximum rent prescribed therefor under the provisions of this act or the orders, regulations or ordinance hereunder promulgated, or otherwise to do or omit to do any action in violation of the provisions of this act or the orders, regulations or ordinance hereunder promulgated.

(*b* It shall be unlawful for any person to demand, accept, receive or retain any payment which exceeds the maximum lawful rent for one month as a finder's fee or service charge for the opportunity to examine or lease any housing accommodation and no finder's fee or service charge shall be lawful unless the person from whom the payment is demanded, accepted, received or retained actually rents or leases the housing accommodation with regard to which payment of said fee or said charge has been demanded, accepted, received or retained.

(*c*) Whoever willfully violates any provision of this act or any rule, regulation or ordinance hereunder promulgated or whoever knowingly makes any false statement in any testimony before the board or whoever knowingly supplies the board with any false information shall be punished by a fine of not more than five hundred dollars or by imprisonment in the case of a second or subsequent offense, such person shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than one year or both. The district court for the judicial district within the housing accommodation affected is located shall have exclusive original jurisdiction over all such actions and complaints.

The superior court shall have jurisdiction in equity to restrain by injunction any violation of this act and ordinances adopted hereunder and rules, regulations and orders promulgated by the board provided for by this act.

The provisions of this act are severable, and if any of its provisions shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

Approved August 31, 1970.

APPENDIX E.

CHAPTER 45 AN ACT GRANTING THE CITY OF BOSTON AUTHORITY TO REGULATE CONDOMINIUM AND COOPERATIVE CONVERSIONS.

Be it enacted, etc., as follows:

SECTION 1. The General Court finds and declares that the serious public emergency declared in chapter seven hundred and ninety-seven of the acts of nineteen hundred and sixty-nine continues to exist in the city of Boston with respect to the housing of a substantial number of the citizens of said city, which emergency has resulted in a substantial shortage of safe, decent, and reasonably priced rental housing accommodations in the city of Boston, particularly for those who are elderly, handicapped, or who have low or moderate annual incomes; and that such emergency has been particularly exacerbated because of deterioration and demolition of existing housing and an insufficiency supply of new housing, and due, further, to the conversion of rental housing units to other uses or forms of ownership, particularly conversion to condominiums or cooperatives and the resulting increases in rent, displacement of tenants or loss of rental housing stock; and that unless the demolition of existing housing and the conversion of rental housing accommodations to other forms of use or ownership are further regulated and controlled, such emergency and the inflationary pressures resulting therefrom will produce serious threats to the public health, safety and general welfare of the citizens of said city; and that such emergency should be met immediately and with due regard for the rights and responsibilities of said city of Boston; and, therefore, this act is declared to be in the public interest.

SECTION 2. Chapter 797 of the acts of 1969, as most recently amended by section 26 of chapter 843 of the acts of 1971, is hereby further amended by adding the following of five paragraphs: —

(a) Notwithstanding the provisions of any general or special law to the contrary, including, without limitation, the provisions of chapter six hundred and sixty-five of the acts of nineteen hundred and fifty-six, and the provisions of General Law chapters one hundred and fifty-six B, one hundred and fifty-seven, and one hundred and eighty-three A, the city of Boston may, by ordinance, further regulate and control the removal of housing accommodations from rental housing use, the reduction in the total number of units in a housing accommodation, or the change in form of ownership of housing accommodations used for rental housing. Such regulations and controls may include, without limitation the authority to:

(i) require that no person shall remove a housing accommodation from rental housing use without first obtaining a permit for that purpose from the board. Such permit may be subject to such terms and conditions not inconsistent with the purposes and provisions of this act;

(ii) require that no person shall convert any housing accommodation to a condominium or cooperative without first obtaining a permit for that purpose from the board; and

(iii) regulate evictions relating to the conversion of housing accommodations to condominium or cooperative subject to such terms and conditions not inconsistent with the purposes and provisiosn of this act.

(b) The city of Boston, in any ordinance adopted pursuant to this act, shall be empowered to promulgate any rules, regulations or orders, not inconsistent with the purposes and provisions of this act, for the enforcement of this act, for the granting or denying of removal permits or for the regulation of such evictions.

(c) Any hearings, regarding matters related to removal permits or evictions shall be conducted by the board in accordance with the provisions of section eleven of chapter thirty A of the General Laws except that requirements (7) and (8) of such section eleven shall not apply to such hearings.

(d) All decisions of the board may be appealed to the district court department of the trial court for the judicial district within which the housing accommodation is located or the housing court department of the trial court, city of Boston division, within thirty calendar days after the notice of such decision.

(e) The superior court department of the trial court and the housing court department of the trial court, city of Boston division, shall severally have jurisdiction to enforce the provisions of this act, any ordinance adopted hereunder and any rules and regulations promulgated pursuant to such ordinance, and may restrain or enjoin violations of such ordinance.

SECTION 3. Chapter 652 of the act of 1960 is hereby amended by inserting after section 14A, as inserted by chapter 488 of the acts of 1967, the following section: —

Section 14B. The conversion of the form of ownership from rental property to condominium or cooperative ownership, of one or more buildings or parts of buildings in a land assembly and redevelopment plan area or in an urban renewal project undertaken in the city of Boston, pursuant to chapter one hundred and twenty-one B of the General Laws, by the Charles River Park "B" Company at Whittier Place, Boston, shall be permitted to stand without the rescission of the sale of individual condominium units, notwithstanding that such conversion may be deemed a modification of the land assembly and redevelopment plan or the urban renewal plan for such project and was thereby required to receive the approval of the Boston Redevelopment Authority, which approval was not sought; provided, however, that the provisions of this section shall exclusively be applicable to a certain class of residents and their specifically listed units known as Isaac Lyumkis, et al, unit purchasers at said Whittier Place, Boston. Said class of residents and specific units listed on a document known as

"Whittier Place Unit Purchasers", Exhibit "I", attached hereto and incorporated by reference. Any such conversion of ownership shall, however, be subject to all applicable provisions of law.

SECTION 4. This act shall take effect upon its passage.

Approved May 6, 1987.

APPENDIX F.

December 10, 1991

Mr. James R. Creamer
Chief Compliance Officer
City of Boston
Rent Equity Board
Boston City Hall
Room 709
One City Hall Plaza
Boston, Massachusetts 02201

Mr. John Dubois
Hearing Officer
City of Boston
Rent Equity Board
Boston City Hall
Room 709
One City Hall Plaza
Boston, Massachusetts 02201

Re: City of Boston, Rent Equity Board
July 25, 1991 Notice of Non-Registration of Rent Controlled Property
Docket No.: C-91-136
Address: 129 Putnam Street, East Boston, MA
Landlord: Resolution Trust Corporation, as Receiver of ComFed Savings Bank, F.A.

Dear Messrs. Creamer and DuBois:

This is in response to the City of Boston, Rent Equity Board's ("Board") July 25, 1991 "Notice of Non-Registration of Rent Controlled Property" for the property located at 129 Putnam Street, East Boston, Massachusetts (the "Property").

Please be advised that the Office of Thrift Supervision ("OTS"), by Resolution Number 91-50, dated January 31, 1991, appointed the Resolution Trust Corporation ("RTC") as receiver ("Receiver") for ComFed Savings Bank (the "Old Association"). The Receiver took possession of the Old Association on January 31, 1991, and succeeded to all the rights, titles, powers and privileges of the Old Association. As provided in Resolution Number 91-50, the OTS, pursuant to the request of the RTC as Receiver, issued a new federal

mutual savings association charter to ComFed Savings Bank, F.A. (the "New Association"), and approved the transfer of such assets and liabilities of the Old Association to the New Association. Resolution Number 91-50 concurrently appointed the RTC as Conservator ("Conservator") for the New Association.

Pursuant to Section 5(d)(2)(H)(ii) of the Home Owner's Loan Act of 1933, as amended by Section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") the RTC, as Receiver, took possession of the New Association on September 13, 1991, and succeeded to all the rights, title, powers and privileges of the Conservator and the New Association. The undersigned has been appointed Field Site Manager for this Receivership. One of the assets of the Receivership is the Property.

Because the RTC, as Receiver, derives its powers pursuant to FIRREA and thereby, the Supremacy Clause of the United States Constitution, the Rent Equity Board Ordinance, Chapter 34 of the Ordinances of 1984, is inapplicable to the RTC. The Board is, therefore, without jurisdiction over the RTC in this matter and real property owned by the RTC by virtue of FIRREA. The statute itself is clear on this point. 12 U.S.C. § 1821(c)(2)(c) (1989). Statements made to the contrary in Joel H. Pasternak's July 16, 1991 letter to John DuBois are in error and we wanted to alert you to that error.

Nonetheless, the RTC is committed to protecting the concerns of low and moderate income tenants. In this regard, the RTC has voluntarily adopted a Statement of Policy for the Disposition of Residential Units Which Were Previously Subject to Rent or Securities Regulation ("Statement of Policy") which sets forth certain self-imposed restrictions on rent increases and evictions of low and moderate income tenants — defined as individual or families with incomes no greater than 115% of median area income. A copy of the Statement of Policy will be sent to you under separate cover.

The RTC is also committed to insuring that the health and safety of the tenants of the Property, as well as other RTC-owned properties, is maintained at acceptable levels. Consequently, the RTC will observe applicable health standards to the best of its ability.

In short, while the RTC, as Conservator or Receiver, cannot comply with the Board's request to register the Property, please be assured that the RTC will continue to act responsibly with respect to the tenants of rent controlled units in its possession.

Very truly yours,

_____

Joseph Harrison
Field Site Manager

cc: Joel H. Pasternak
A. Neil Hartzell, Esquire
Raymond A. Yost, Esquire

APPENDIX G.

GREATER BOSTON LEGAL SERVICES
622 Washington Street
Dorchester, Massachusetts 02124
617 265-1808
FAX 825-1389

June 28, 1993

James R. Creamer
Chief Compliance Officer
Boston Rent Equity Board
Boston City Hall
Room 709
Boston, MA 02201

Re: Tony Wellington, 20 Irma Street, Dorchester, MA 02124

Dear Jim:

I am enclosing a copy of a notice to quit that my client received from the RTC some weeks ago. Kathy Palmer suggested I send you a copy.

If you could talk to any contacts you may have with the RTC to encourage them to discontinue this case, I would greatly appreciate it. If RTC will not drop the action, I will file a compliance complaint on behalf of my client. Feel free to call and thanks in advance.

Sincerely,

_____

Joel Feldman

cc: Tony Wellington

May 18, 1993

30 - DAY NOTICE TO VACATE PREMISES

To: Estella White or Mr./Ms. Alvarado or Mr./Ms. Salgado or Mr./Ms. Wellington or Current Occupant
20 Irma Street, Third Floor
Dorchester, MA

From: Resolution Trust Corporation as Receiver for
Home Owners Savings Bank F.S.B.
1000 Adams Avenue
Norristown, Pennsylvania

You are hereby notified that Resolution Trust Corporation as Receiver for Home Owners Savings Bank F.S.B. by entry of foreclosure is the legal owner of the subject premises at 20 Irma Street, Third Floor, Dorchester, MA and thereby intends to exercise its superior right to possess the premises.

Accordingly, you are directed to vacate the above-named premises on or before June 31, 1993. If you fail to do so, due course of law shall be employed to evict you.

Resolution Trust Corporation as Receiver
for Home Owners Savings Bank F.S.B.,
By its attorneys,

BARRON & STADFELD, P.C.

_____

Denise L. Page
B.B.O. #119415
Two Center Plaza
Boston, MA 02108
(617) 723-9800

Date: _____

11835-112-2